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New York Code











# **New-York Code.**

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## **FIRST REPORT OF THE COMMISSIONERS OF THE CODE.**

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### **BOOK I.**

#### **CHAPTERS 1, 2, 3 and 4.**

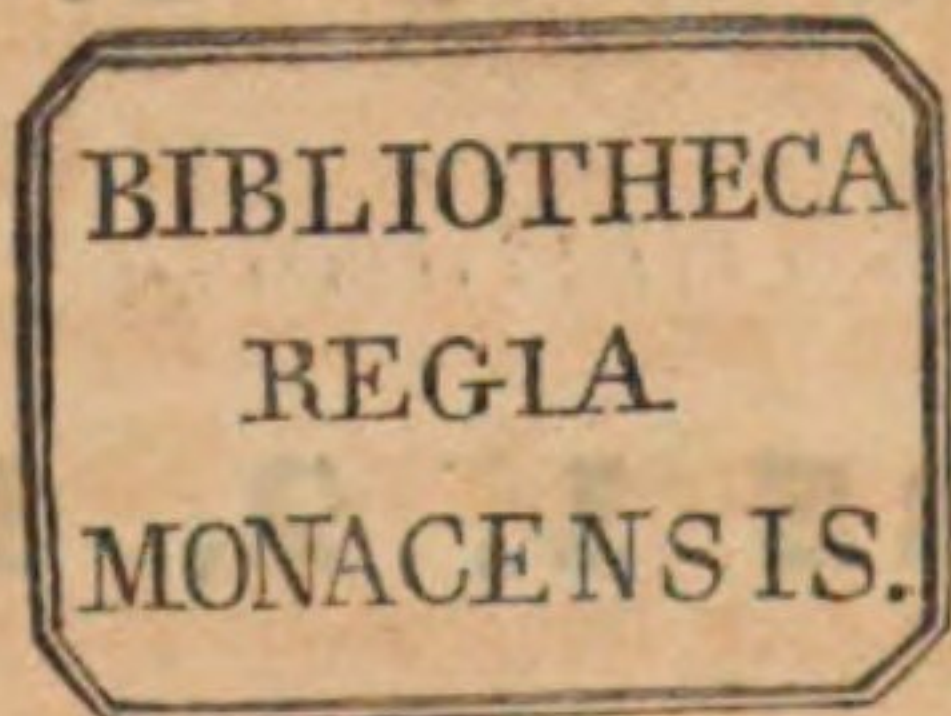
**WITH AN ANALYSIS AND PRELIMINARY REPORT.**

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**ALBANY:**  
**WEED, PARSONS AND CO., PUBLIC PRINTERS.**

.....  
1849.







## PRELIMINARY REPORT.

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### TO THE LEGISLATURE OF THE STATE OF NEW-YORK:

The Constitution declares that such parts of the common law and of the acts of the Legislature of the Colony of New-York, as together did form the law of the said colony on the 19th April, 1775, and the resolutions of the Congress of the said colony, and of the convention of the State of New-York, in force on the 20th April, 1777, which have not since expired or been repealed or altered: and such acts of the Legislature as were in force, should be and continue the law of the State, subject to such alterations as the Legislature should make concerning the same; but that all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to the constitution, are abrogated. The same section of the constitution which thus ordains the law, requires the Legislature to appoint three Commissioners, and makes it their duty to reduce into a written and systematic code, the whole body of the law, as thus established, or so much and such parts thereof as to them shall seem practicable and expedient: And they are also required to suggest such alterations and amendments therein, as they shall deem proper. By the general repealing act, passed April 10, 1828, it is declared that no statute, passed by the government of the Colony of New-York, shall be considered as the law of this State. The laws of the State, then, consist of the statutes not repugnant to the constitution, and the common law. These branches or parts of the law are distinct in their character, and cannot readily be assimilated in their general and leading features. Statutes are arbitrary rules, ordained by the Legislature, based upon considerations of public policy, or arising out of the exigency of public affairs. In some instances they are declaratory of the common law; but in most cases, they either change the common law, or introduce new rules. Great portions of the statutes of the State, are the result of our system of government, and necessary to regulate and carry into effect its powers.

The statutes were arranged by the revisers, under the following general heads:

I. Those which relate to the territory; the political divisions; the civil polity, and the internal administration of the State.

II. Those which relate to the acquisition, the enjoyment and transmission of property, real and personal; to the domestic relations; and generally, to all matters connected with private rights.

III. Those which relate to judiciary establishments, and the mode of procedure in civil cases.

IV. Those which relate to crimes and punishments; to the mode of proceedings in criminal cases, and to prison discipline.

V. Public laws of a local and miscellaneous character, including the laws concerning the city of New-York; acts incorporating cities and villages, and other acts of incorporation.



The laws which fall under the first general head, are :

1. Such as relate to the boundaries of the State, and its territorial jurisdiction.
2. Such as relate to the civil divisions of the State; defining the counties, Congress, Senate and Assembly districts, cities, towns and villages.
3. Such as relate to the census and enumeration of the inhabitants.
4. Such as relate to the rights of the citizens, and inhabitants of the State.
5. Such as relate to the public officers of the State, their qualifications, and the tenure of their offices; their election, removal from and resignation of office, and to supplying vacancies, and to the commissions of officers.
6. Such as relate to elections; the rights of voters; the time and place of holding elections; the manner of voting; and the canvass and final estimate of votes.
7. Such as relate to the Legislature; the powers, duties and privileges of the two houses, and their members and officers; the enactment and promulgation of statutes; the mode of taking testimony in legislative proceedings, and the compensation of members and officers of both houses.
8. Such as relate to the powers and duties of the executive officers of the State, and to various matters connected with their respective departments.
9. Such as relate to the funds, revenue, expenditures and property of the State, and the administration thereof: These embrace the necessary provisions in respect to the General Fund; the Canal Fund; the Literature Fund; the Common School Fund; the public lands; the powers and duties of the Commissioners of the Land Office; the Commissioners of the Canal Fund, and the Canal Commissioners; to the navigation of the canals and the collection of tolls; to the protection and maintenance of the canals; to the public buildings, and to the funds and property of the State.
10. Such as relate to the militia.
11. Such as relate to the powers and duties of towns.
12. Such as relate to the powers, duties and privileges of counties; the duties of county officers, boards of supervisors, treasurers, town officers, clerks, sheriffs, coroners, district attorneys and surrogates.
13. Such as relate to the assessment and collection of taxes.
14. Such as relate to the public health.
15. Such as relate to public instruction, including the powers and duties of the board of Regents; trustees of colleges and academies; the common schools; the disposition, management and distribution of the School Fund.
16. Such as relate to highways and bridges.
17. Such as relate to the regulations of trade.
18. Such as relate to corporations.
19. Such as relate to the computation of time, of weights and measures, and the money of account.
20. Such as relate to the internal police of the State.



The laws falling within these several divisions are, in most respects, to be framed with reference to the provisions of the constitution, and have a nearer relation to that instrument than any others in force. This arrangement of this body of our laws was adopted, after great consideration by the revisers; as remarked by them, they have but little connection with the general, civil, or criminal code, and form a body of constitutional and administrative law capable of being reduced to the simplest form and most orderly arrangement.

The extensive and radical changes in the Constitution are sufficient, without the example afforded by the course of the former revisers, to show the necessity of a thorough revision in this branch of the law. To accomplish this, many titles and chapters require to be entirely redrawn, not only with reference to each particular provision of the Constitution, but to their bearing upon analogous subjects; the meaning of ambiguous expressions is to be detected; the positive provisions of one section reconciled, if possible, with equally positive and apparently contradictory provisions in other sections; general expressions are to be limited in their operation and meaning by the sense and import of other expressions, and the whole instrument requires careful and critical examination, in order to avoid any enactment in conflict with its provisions.

The existing Constitution has materially changed the structure as well as the administration of the State government. The judges of our highest courts, and all the principal State officers, are elective. It contains many special provisions in relation to their election, and to supplying vacancies and removals. Statutes to carry these provisions into effect, run into details, and the necessity of their conforming strictly to the Constitution must be obvious.

The Constitution contains special and very stringent provisions, in relation to the administration of the funds of the State, and for paying its Canal and General Fund debt. From the 1st June 1846 till the 1st June 1855, one million three hundred thousand dollars, and after that period one million seven hundred thousand dollars, are to be annually appropriated as a Sinking Fund, to pay the interest and redeem the principal of the canal debt. After complying with this provision, the Constitution appropriates, annually, out of the residue of the nett revenues of the canal, three hundred and fifty thousand dollars, until a Sinking Fund shall be accumulated sufficient to pay the Canal debt, and after that period one million five hundred thousand dollars, to pay the interest and redeem the principal of the General Fund debt, and the contingent debt created by loaning the credit of the State to incorporated companies. A sum not exceeding two hundred thousand dollars, is to be annually paid out of the canal revenues, after providing for the Sinking Funds before named, to defray the necessary expenses of the State government, and if, after the expiration of eight years from the adoption of the Constitution, the revenues of the State are not sufficient to pay the necessary expenses of the State government, without continuing or levying a direct tax, the Legislature may, at its discretion, supply the deficiency, in whole or in part, from the surplus revenues of the canals; but the sum thus annually to be appropriated cannot exceed five hundred and fifty thousand dollars, until the Erie canal enlargement, and Genesee Valley and Black River canals are completed.

After making these appropriations for the Sinking Funds, and to the support of the State government, the residue of the nett revenues of the canals, are pledged to the completion of the Erie canal enlargement and the Black River and Genesee Valley canals. All laws making or authorising any different disposition of the canal revenues from that prescribed in the Constitution, are abrogated. There can be no greater sums taken from the nett canal revenues, to supply the Sinking Funds, and defray the expenses of the government, than are named in



the Constitution, and all the revenues over and above these appropriations, must be applied to the completion of the public works : should any of the funds set apart to the payment of the debt be lost, such loss cannot be supplied from the revenues of the canals, pledged to their completion.

The Constitution is silent in respect to the administration of these Sinking Funds, and no existing statute is applicable to that purpose. Upon correct financial principles, a Sinking Fund should be separate from all other Funds, and administered under proper regulations of law. The Constitution evidently contemplates that a system for the management of these Funds will be devised by the Legislature.

The appropriations required by the Constitution are insufficient to meet the canal debt, and pay the interest thereon as they become payable. Some general provision of law is indispensable for providing for the deficiency. By § 5, art. 7, Const., in case these sinking funds prove insufficient to enable the State, on "the credit of such funds," to procure the means to satisfy the claims of the creditors of the State, as they become payable, the Legislature shall by equitable taxes, so increase the revenues of such fund, as to make it sufficient perfectly to preserve the public faith; and by § 10 of the same article, the State may, to meet casual deficits in revenue, or for expenses not provided for, contract debts, not to exceed in the aggregate, one million of dollars.

To supply the deficiencies in the Sinking Fund to pay the canal debt, the State may resort:

1. To the credit of the fund itself. The moneys borrowed on the credit of the fund, must be strictly appropriated to the debt which the fund is designed to extinguish. Such application will not cancel, but merely postpone the payment of the debt, until the accumulations of the Sinking Fund shall be sufficient for that purpose. The effect of raising money on the credit of the Sinking Fund to redeem the stocks as they fall due, will not be to extinguish the debts of which the redeemed stocks are the evidence, but equitably to transfer to the party advancing the money, on the credit of that fund, the same obligation the State was under to the holder of the stock redeemed by such advance, and there seems to be no objection to the certificates issued, for moneys advanced on the credit of the Sinking Fund, expressing such liability.

2. The Legislature may, by tax, raise the sum necessary to pay the canal debt and the interest as it falls due, whenever the Sinking Fund proves insufficient; but it is unnecessary to resort to this measure. With a revenue, certain, beyond all contingency, to be derived from the tolls of the canals, and fully sufficient to supply the Sinking Fund, required by the Constitution for the redemption of the canal debt, the holder of the public stocks of the State, has in the lien upon this fund, the best possible security. Indeed it may be doubted whether any public debt is so well or sufficiently secured, as would be a debt of sixteen millions of dollars, secured as is the canal debt of this State, upon a Sinking Fund as ample and as certain to be realised, as that created by the constitution, for the redemption of that debt.

The operations of the Sinking Fund during the present year will reduce the canal debt to about sixteen millions of dollars, and the annual interest thereon, to between eight and nine hundred thousand dollars. To the payment of this debt and interest, \$1,300,000, is, by the constitution, to be set apart in each year for six successive years from the 1st June next, and after that period \$1,700,000 in each year, till the entire debt and interest is paid. These annual appropriations are made the first charge upon the nett revenues of the canals. During the preceding fiscal year, these revenues exceeded the appropriation to the Sinking Fund, for the



redemption of the canal debt, by over a million of dollars; no possible contingency can ever reduce them to an amount, below what is requisite to supply all the Sinking Funds established by the Constitution. With this fact, so certainly established, and the funds so inviolably pledged by the Constitution to the payment of the existing debt, or to any sum that may be borrowed on the pledge and security of the fund for that purpose, there should be no distrust on the part of capitalists, as to the security afforded for any loans that may be made on the security of the fund.

Fully to establish this confidence, provisions should be made by law for the administration of these sinking funds, distinct from the other funds of the State, and for keeping the accounts of each separate, so that the Legislature and the public may know at all times the condition of the fund, and especially that those who invest their capital upon the faith of the fund itself, may know precisely the provisions established for its administration.

It is also essential for the security of these Funds that they be deposited in safe hands or securely invested, under suitable regulations created by law, nor should the law be without general provisions, regulating the management and safe keeping of the current revenues of the canals, as from these the Sinking Funds are to be supplied. Over three millions of dollars are to be collected, disbursed, or appropriated, annually, from the revenues of the canals. These large sums are received by the collectors of tolls and deposited in banks under the direction of the Canal Board. Large amounts of canal revenues, deposited with insolvent banks, are, in a measure, unavailable, but secured by liens upon the Safety Fund, and will eventually be paid. A very considerable sum is now due from insolvent banks, organised under the general banking law, for which the State has not in every case, adequate security, some portions of which will probably never be realised.

The safe keeping of the State revenues depends, almost entirely, upon the action of the Legislature and the laws to be passed for that purpose. The loss of any portion of the public money is supplied only by additional taxation, and in view of the changes that may be expected in our banking system generally, and the establishment of a policy that looks only to the security of the bill holder, and not the depositor, it is indispensable to devise some scheme by which the public moneys may be securely kept, and all loss avoided, from the failure of the institutions in which it is deposited. It is also important that this fund be applied to its legitimate purpose as soon as practicable after it is realised from the revenues of the canal. It is not to be expected that the officers, entrusted with the administration of the Sinking Funds, will be able to realise, from the moneys under their charge, applicable to the payment of the outstanding canal debt, the same rates of interest as is payable on the debt itself, and every reduction of the principal debt, charged on the Sinking Funds, must add to the security afforded by those Funds, and enable the State to obtain any advances, that may be required, on their credit, at lower rates of interest, thereby accelerating the final extinguishment of the debt, and hastening, also, the completion of the public works.

On the 30th September, 1846, the General Fund debt of the State paying interest, was \$5,992,840.82, and the annual interest thereon \$331,738.09. On the 30th September, 1848, the debt, paying interest, was \$5,989,693.32, and the interest \$341,331.00. The debt of the State, other than the canal debt, and called the General Fund debt, excluding the principal of certain Indian annuities, as ascertained during the session of the Convention, was \$5,762,854.34. At that time a contingent liability existed against the State for loans of stocks, amounting to \$1,563,000 to corporations which have paid and still continue to pay the interest on those stocks. This contingent debt has been reduced to \$1,233,905.60, by the redemption of portions of the stock thus loaned, by the companies that were bound to make such redemption, so that the positive and contingent debt of the State, to the extinction of which the second Sinking Fund, created



by the Constitution, is made applicable, may be estimated at \$6,000,000, but it is hoped the State will never be obliged to pay any part of this contingent debt.

To carry into effect the provisions of the Constitution, it seems necessary, in respect to the Canal and General Fund debts, that their amount, on the 1st June, 1846, should be ascertained, and the accounts so kept that the appropriations made for their redemption should be specifically applied to that object, and that every additional debt of the State, contracted since the 1st June, 1846, should be regarded and treated as distinct from the debt then existing, and that no application of any portion of the revenues, set apart by the Constitution to the payment of principal and interest of these debts, should ever be applied to any different purpose.

After appropriating out of the revenues of the canals, the necessary sums to supply the Sinking Funds, two hundred thousand dollars is by the Constitution appropriated out of the canal revenues, to defray the necessary expenses of the State; and the entire surplus revenues of the canals, beyond these appropriations, are pledged to the completion of the unfinished works of public improvement, as above stated.

The entire funds and revenues of the State being pledged to certain and specific objects by the constitution, the ordinary expenses of the State government are to be defrayed from other sources. Its revenues applicable to that purpose, are, at present, the before mentioned appropriation of \$200,000 from the canal revenues; the State tax, of \$235,000; auction and salt duties, estimated at \$117,000; and other incidental sources of revenues of about \$20,000: making in all, \$572,000; while the estimated expenses of the government amount to about \$700,000. This deficiency in the revenues is supplied by loans, or appropriations, from time to time, of specific funds, or their revenues, under a general authority vested by the Legislature in the public officers. These appropriations have been made from time to time, until the sum amounts to \$1,420,691.45. This general authority in public officers to borrow money, is at best of doubtful policy, if not a dangerous power, and its existence seems incompatible with the constitution. To meet casual deficits, or failure in revenues, or for expenses not provided for, an increase of debt, not exceeding a million of dollars, may be made. "But the moneys arising from loans, creating such debts, must be applied to the purposes for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever." (*Const., Art. 7, § 10.*) The power to loan money for general and undefined purposes, seems prohibited, and every loan must be for some designated object, authorized by the Legislature; and when obtained, can be applied only to that purpose. An expense not provided for, or a deficit in revenue, are among these objects; but the language of the constitution seems to imply that the particular object to which the proceeds of a loan is to be applied, should be designated in the law authorizing it to be made.

As appears from the reports of State officers, the appropriation, under various laws, of these specific funds to State expenditure, has somewhat increased since the adoption of the Constitution; but in a less degree than for many years previous. It is a question for the Legislature, whether this increase shall continue, until restrained by the limits prescribed by the Constitution, when it must necessarily cease; a tax will then become necessary to pay the interest on the debt thus created from time to time, by these appropriations, and to supply any deficit in revenues for the support of the government.

The Constitution ordains that the capital of the Common School Fund, and of the Literature Fund, and the United States Deposit Fund, shall be preserved inviolate; and that the revenues of the Common School Fund shall be applied to the support of common schools; and that the revenues of the Literature Fund shall be applied to the support of academies; and that twenty-



five thousand dollars of the revenues of the United States Deposit Fund, shall be added, annually, to the capital of the common School Fund.

About one million four hundred thousand dollars of the moneys belonging to these funds are invested in the stocks of the State, and in the Comptroller's bonds, executed for moneys taken from these funds and applied to the purposes of the State. By the operation of the sinking funds, to be created under the constitution, these moneys are to be restored to the funds to which they belong; which will render necessary, enactments for their future management and investment.

After the debts of the State are paid, its specific funds will be,

|                                                           |                       |
|-----------------------------------------------------------|-----------------------|
| 1. The Common School Fund, now amounting to.....          | \$2,211,475 14        |
| 2. The Literature Fund, now amounting to.....             | 265,806 78            |
| 3. The United States Deposit Fund, now amounting to ..... | 4,014,520 71          |
| Total,.....                                               | <u>\$6,491,402 64</u> |

These funds cannot be decreased, and the Common School Fund is to be increased, annually, by at least the sum of \$25,000. The income of the United States Deposit Fund is subject to the authority of the Legislature, after making the annual appropriation of the sum last named to the increase of the capital of the Common School Fund; but it appears an amount beyond the revenues of this fund has been appropriated by law. Its revenues for the current year is estimated at \$255,152.00; and the sum now appropriated, to be paid therefrom, including a deficit to meet the appropriations made from its revenues in 1848, is \$278,600, so that at the end of the current year there will stand charged against the revenues of this fund over \$23,000. The propriety of some general scheme, or plan, for the administration of this fund, which will keep its revenues from being pledged, or appropriated for years before they accrue, seems expedient if not indispensable.

The other branches of the public law embraced under the first general head, in many respects require amendment and revision. The laws relating to the powers and duties of towns, counties and their officers, owing to numerous amendments, made since the adoption of the Revised Statutes, have become, in many respects, unintelligible, and in others contradictory, giving rise to litigation and controversy. The powers and duties of boards of supervisors may be enlarged by the Legislature. After conferring certain powers upon these boards, the Constitution provides that "the Legislature may confer upon the boards of supervisors of the several counties of the State, such further powers of local legislation and administration as *they* shall from time to time prescribe." "The legislative power is vested in the Senate and Assembly." No law can be passed without the assent of a majority of all the members, and the approval of the Governor. These provisions are necessary to be observed, in order to determine what powers may be conferred upon boards of supervisors. The language of the provision limits them to "powers of local legislation and administration." These cannot be made to extend to the power of making general laws, binding upon the people of the county, or to embrace any portion of the general legislative authority of the State. Counties are corporations, and all such bodies are capable of exercising a species of legislative authority. A city ordinance, or village by-law, if lawfully made, is as much a law as if enacted by the Legislature; but whatever powers may thus be exercised, by inferior bodies, must be under some general rule, and within some prescribed limits, fixed by the Legislature, and cannot be, in any sense, portions of the general legislative authority of the State.



The laws relating to the assessment and collection of taxes, are admitted on all hands, to be exceedingly imperfect. It is the first duty of the Legislature to devise a system of equal taxation. Every species of property should bear its just proportion of the public burthens. Taxes are either for State or local purposes. City taxes are the heaviest that are imposed, and complaints are made that personal estate escapes, especially in cities, from a just contribution to the public expense. The value of real estate is easily ascertained, but the law is deficient in means to discover personal property. From the tables accompanying the public documents, it appears that the real property of the State is estimated at \$526,624,853, and the personal estate at \$125,663,318. If the amount every man was worth, over and above his debts, could be ascertained, it would probably appear much greater. It cannot be doubted but much personal property is concealed and entirely escapes just taxation. No other mode of equitable taxation can be devised than to have all property assessed at its actual value, and every man rated for the full sum he is worth; and the power should be vested in assessors to ascertain, by proper proofs the value of every man's estate, real and personal, and to compel them to do so or suffer heavy penalties, or punishment in some other form. Property should also be equitably taxed, for local purposes, where it is actively and permanently employed in business or trade, and where it is benefited by local expenditures. The residence of a man is no certain criterion to determine where he should pay his tax; his capital may be actively employed elsewhere, and where it is rendered more secure and productive, by the improvements continually made by taxes on the capital of resident owners. The subject of taxation is admitted to be among the most difficult with which the Legislature can deal; but we are well persuaded the laws require to be amended, so that the principles here adverted to may be applied.

The laws relating to public health, by reason of the recent decision of the Supreme Court of the United States, require great attention at the hands of the Legislature. Acts passed with the greatest care have been pronounced repugnant to the federal constitution, and therefore void. These laws had their origin in motives of humanity; they were intended for the benefit of the thousands that are seeking our shores, almost daily, and to extend to them that charitable aid the government only can bestow. They were intimately connected with all those regulations that had reference to the health of our commercial emporium; but wise and salutary as these laws were supposed to have been, they are virtually expunged from the statute book by the decision of the Supreme Court of the United States. The grounds on which the decision was made are not yet fully ascertained, and the formation of the necessary laws to attain, if possible, the objects intended to be secured by those pronounced void, must be deferred until the precise extent of our State jurisdiction over the subject shall be ascertained from the reasoning of the court.

Under the law that has thus been pronounced void, a tax upon the master, mate and sailors, and upon the passengers in every vessel arriving in the port of New-York, from a foreign port, was imposed, and the money thus raised was appropriated to the maintenance of the marine hospital on Staten Island, and the hospital for sick and infirm seamen. The inquiry how the State can provide against the danger of pestilence and pauperism, from passenger ships, becomes important and serious. It seems admitted that it has the right to do so, and may exercise it in some form; but the recent decision of the Supreme Court throws no light upon this question. "It is not expected that the citizens of New-York will disregard the calls of sympathy and charity, and repulse from their shores the needy and wretched who are seeking an asylum amongst them." A new system of providing for the multitude of poor passengers daily arriving from foreign ports, and to maintain our hospitals and continue to administer the public charities of the State, becomes indispensable, and should be embraced in the revision of that branch of our laws relating to the public health.



The law relating to corporations requires thorough revision. Corporations may be formed under general laws, but cannot be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. Corporations are regarded, in many respects, as individuals; they are aggregate bodies of men, having a political existence, which represents and combines all the interests of the members, for some common object. Generally these objects are the individual interests of the members, and in many instances the State is not concerned in the purposes for which they are created. In such cases corporations should, to carry out the spirit of the Constitution, be created under general laws.

There are, however, a class of corporations, created for objects which cannot be attained, unless they are vested with powers which do not appertain to individuals or to corporations, as such. It would not be wise to create corporations, by general laws, to build bridges over the navigable streams of the State, at their pleasure, and whenever their construction might be deemed profitable. In granting such powers to a corporation, or an individual, the Legislature delegates to the grantee of such right some portion of the sovereign authority, without which the grant would be valueless. And whenever, to attain the objects for which a corporation is created, the exercise of any prerogative or power residing in the sovereign people is necessary, a special law for the creation of such corporation seems indispensable.

Great care should be taken, also, to define the powers of corporations, and by suitable provisions to guard against the exercise, by all corporate bodies, of powers not granted. It is an undeniable fact, that most of the failures of corporations result either from the exercise of unauthorized powers, or from frauds committed by those entrusted with their management. To prevent such results, their powers should be carefully defined, and the exercise of unauthorized powers strictly forbidden: and all fraudulent or unauthorized acts of the corporators or their officers, severely punished.

The very able and learned gentlemen, to whom was assigned the duty of revising the statutes, deemed it to be one of the first objects to be effected by the revision, to accommodate the public law to the amended Constitution; and after nearly three years had been devoted to that object, they were enabled to submit to the Legislature the provisions falling under the first general head or division of the Revised Statutes, as arranged by them. We are not aware that the task of revising this part of the statutes, or adapting them to the existing Constitution, is less difficult than the duty performed by the revisers. To frame the provisions to carry into effect the requirements of the Constitution, renders it necessary to devote more time to the investigation of that instrument, than was necessary, in order to adapt the provisions of the Revised Statutes to the Constitution of 1822. In other respects our labors have been diminished by the order and arrangement of the revisers, which we deem proper to pursue, and some of the chapters may be reported without material alteration, or by the alteration of existing sections and the addition of new ones, necessary to conform their provisions to the Constitution.

We have never doubted the propriety of confining our labors, in the first instance, to a revision of that part of the statute law, properly designated by the former revisers, "the constitutional and administrative law." These laws, as they remarked, "are of the most general application. They prescribe the duties of our public officers of every grade, and regulate the daily proceedings of our citizens." "Every public officer, and we might almost say, every citizen engaged in active business, is required to act upon these statutes, and frequently under circumstances which render professional advice unattainable. They ought therefore to be made, if human language will permit it, so simple and intelligible, as to be level to the comprehension of all who are obliged to consult them."



Owing to the numerous statutes passed since 1830, the public laws of the State have become contradictory in their provisions, and imperfect in many respects. It is to be regretted that in framing statutes, amendatory of, or relating to the Revised Statutes, sufficient care has not been bestowed upon their provisions, nor sufficient acquaintance exhibited with the subjects to which they relate. It is within the observation of all gentlemen of experience that the increase of litigation, within the last few years, has, in a great degree grown out of hastily drawn statutes, making violent changes in the law and in the administration of public affairs. The numerous applications to the Legislature, to amend and correct the errors and defects in the public laws of the State, may, we think, be referred to as showing the necessity of a careful and thorough revision and correction of this branch of the law. The revisers adverted to a similar condition of the laws in their preliminary report to the Legislature, and did not hesitate to declare, that many of the statutes, of which it is composed, were "carelessly and immethodically" drawn, and we may be permitted to remark, without offence, that the evil of which they complained has not been diminished. There is no public mischief of greater magnitude, or of more annoying character, than a body of imperfectly drawn and ill considered statutes: they lead inevitably to litigation and controversy: they embarrass public officers in the discharge of their duties and multiply the business of legislation, by constant applications for their amendment or correction.

The Senate at its last session directed to the judiciary committee of that body "to report their opinion, whether it was not wiser for the codifiers of the law, instead of attempting to reduce the unwritten law to writing, to revise our statutes, adapting them to the new Constitution, omitting what is useless, or has been repealed, and adding notes of explanation, with reference to the decisions of our courts." The chairman of the judiciary committee, sent to each of the Commissioners of the Code a copy of this resolution, with a request that they would state their opinion upon the matters embraced in it, which was regarded as soliciting their individual opinion, and their several answers were accordingly given. It is not necessary to repeat what was therein stated, further than that the importance of an extensive, detailed and comprehensive code of constitutional and administrative law, was referred to, as proper to receive the first attention of the commission. In this conclusion it was supposed our colleague concurred, as the views severally expressed by us, were substantially agreed on at a meeting of the Commissioners, and not until after the commencement of the present session of the Legislature, were we given to understand that he did not concur nor intend to cooperate in our labors. Until this time we supposed certain portions of the work, necessary to perfect this branch of the law, would be performed by him, and that we should have the benefit of his assistance, in its final arrangement and completion during the present session of the Legislature. We have yet been unable to discover in what respect the difference exists between us, nor have we been favored with his views as to the course of proceedings he deems proper to adopt, further than may be gathered from his reply to the enquiries of the judiciary committee, during the last session of the Legislature. In his communication to the Assembly of the 23d January last, he says, "I shall hasten at an early day to lay before the Legislature my views, as to the proper course of proceeding, with a specimen of the work done according to it, and ask for some legislative enactment, by way of interpretation of our duties and mode of proceeding;" and in anticipation of such communication being made, in very proper terms, refers the question of alleged difference, between him and ourselves, to the decision of the Legislature. The result of such decision is apparent. If a different course of proceeding is proposed by different members of the commission, proper self respect would require that those whose views are opposed to the sense of the Legislature should retire. And we have waited with no common degree of anxiety, for the promised communication from our colleague, and with a desire that his plan for the execution of the important duty entrusted to the commission, should receive the unbiased action of the Legislature. The near termination of the session



renders it proper that we should not longer defer the duty of stating some of the reasons that have led us to adopt the course from which our colleague has seen fit to dissent.

While the question thus stands open, and the course we deem proper to adopt liable to be rejected for a better or more feasible plan, it might seem indiscreet to proceed with the printing of the portions of the revision of the first part of the Revised Statutes we have deemed necessary to undertake. We have, besides, a strong solicitude to secure the aid and co-operation of a colleague. The Constitution contemplates that every part of the duty assigned to the Commissioners of the Code will be performed by the joint action of a full commission. If the convention had supposed it might properly be performed by two Commissioners, it would not have required the appointment of three.

We have given to the first part of the Revised Statutes as full, thorough and accurate investigation, as we are able to bestow, and compared existing provisions with the Constitution, and carefully considered the necessary provisions to be inserted and the proper amendments to be made. The adaptation of these provisions to the Constitution renders it indispensable, as is before remarked, to give construction to that instrument, and raises, in many instances, questions not easy of solution. The Legislature will not fail to perceive that we could derive important aid in these respects, from the assistance of a colleague, nor to appreciate the propriety of having all these questions first discussed and settled by a full commission. It may be proper to state that we are prepared to print a revision of the first volume of the Revised Statutes, but these considerations, and the fact that the Legislature has now before it three reports, unacted upon, from the Commissioners of Practice, have induced us to defer further printing until the Legislature shall make some final determination in respect to the commission; for, in the event of a plan different from that we have devised being adopted by the Legislature, such printing would incur a useless public expense, and, in addition to this, we have not overlooked the fact that the suggestions of a colleague may show to us the propriety of many alterations in the provisions we have agreed on.

It may be expected that we should advert more fully to the manner in which the entire duty of the Commissioners of the Code is to be performed. The Constitution vests them with large discretion. So much of the law as they shall deem practicable and expedient is to be reduced to a written and systematic code, and they are to propose alterations and amendments thereon. The late Chancellor, in a communication made by him to the Senate, dated 22d April, 1847, used the following language: "I am not one of those who believe it wholly impracticable to carry out the provisions of the Constitution on this subject. On the contrary, I think it not only practicable, but highly expedient, to collect the general principles of the unwritten commercial and other civil law, and of our equity system, as well as the criminal law of the State, now scattered through some thousand volumes of treatises, commentaries digests and reports of judicial decisions, and to arrange them under appropriate heads, divisions and titles, in connection with the statute law on the same subject." "I do not, however, believe it practicable to frame a code, which will regulate and provide for all cases that may arise in the constantly varying employments of life and changes of society." We have seen no occasion to differ from the Chancellor in this general outline of the duty of the Commissioners. It is, however, but an outline, that may be enlarged or restricted, as the work shall progress.

There must continue to be, in this State, a large and extensive code, or body of written law, in addition to what relates to the administration of public affairs, embracing provisions concerning the acquisition, enjoyment and transmission of real and personal property, the domestic relations; the execution and proof of wills and testaments; the rights, powers and duties of executors and administrators, guardians and wards; the laws relating to insolvent debtors, to fraudulent conveyances, and generally to all matters affecting private rights; to the powers,



jurisdiction and proceedings of courts; and to the duties of public officers in the administration of the law affecting private rights. This body of law extends to a greater variety of subjects, and affects more interests than any other existing code. It embraces many of the leading rules and principles of the common law. In many respects it supplies deficiencies in, and alters those rules; in others, it corrects erroneous decisions of the courts, and by declaratory provisions reconciles conflicting decisions. To enlarge the existing Code, so as to embrace the analogous rules and principles of the common law; and to combine, according to the plan suggested by the Chancellor, the statute law with the principles of the common law, would be a work of great value, if properly executed. If done improperly it would produce incalculable mischief.

It would be as impossible as it certainly would be presumptuous, to prescribe in advance, the extent to which the principles of the common law may be blended with the provisions of the statute. The task is so difficult, that many of the most enlightened minds regard it as a dangerous undertaking. There are, however, many rules of the common law, as settled by decisions, that our courts have regarded unsound, and as proper to be corrected by the Legislature. There are also conflicting decisions between our own courts, upon points of law, and the courts of other States and the federal courts, that involve the substantial rights of parties arising under contracts, and many rules that have been shaken by the force of subsequent decisions, or which do not rest upon sound reasoning. By a properly arranged body of statutes, the law in these respects could be amended and declared. Such amendments must, to be of any public advantage, be made, after the fullest consideration and the most careful investigation, given to each subject. Nothing is more dangerous than to change the laws of a people, and experience is fast teaching us, that hasty or ill-considered innovations are not beneficial reforms. It is no difficult task to draft a volume of sections of laws; but, as remarked by the Chancellor, "those who have not particularly considered and examined the subject in all its details, can have no adequate conception of the time, study, labor and care, which will be requisite to embody and arrange all the principles of the unwritten law, which regulates the rights of individuals, with their various exceptions and modifications, when applied to special cases, in connection with the whole statute law, under their appropriate titles and heads, in a well digested code." When such a code is formed, with the utmost care and consideration, it ought to be submitted to some board or body for examination and revision, before its final adoption. "The code of France was sent to each of the courts of appeal, for their examination and their comments to be made thereon; the project, with their observations, was then discussed in council of state, and at the tribunate. After which, the different titles were presented to the legislative body, and adopted in their improved and modified form." "The framing of the commercial code of France was committed to six commissioners, in April, 1801, who completed the original draft in about one year. (This code contains 648 sections.) But the draft was again revised and corrected by them; and after it had been examined and commented on by the several chambers of commerce of France, the commercial tribunals and the several courts of appeal, it then underwent a further examination in the council of state, and was finally presented to the legislative body for adoption, in September, 1807, about six years and a half after the commencement of the labors of the commissioners who prepared and revised it." (*Chancellor Walworth's Letter to the Senate, Doc. 102, 1847.*)

The revisers of the statutes were appointed in November, 1824. At the meeting of the Legislature in 1827, the first ten chapters, and chapter nineteen, of the first part of the Revised Statutes were presented, and partially acted upon. The residue of the chapters, composing the first part of the statutes, were submitted at a special session in September of the same year. The Legislature, by joint rules, ordered that the several chapters reported by the revisers, should be referred to joint committees of both houses, and that no more than three chapters should be referred at any one time. The revisers were required to attend the



joint committees, and assist them in their labors. By this procedure, the entire revision underwent careful and thorough investigation. The practical common sense of members was brought to act in co-operation with the extensive legal learning of the revisers; many important alterations and amendments were made, and the laws, before receiving the final sanction of the Legislature, were thoroughly, accurately, and learnedly investigated.

Among the reasons assigned by the Chancellor for declining to act as a Commissioner of the Code, was the want of any suitable provision for submitting the code to the necessary preliminary investigation, before it received the final action of the Legislature; and he took occasion to remark, that "if the course pursued in relation to the civil and commercial code of France, of submitting the draft of the different parts of the code to the judges of the superior courts, for their examination and observations thereon, and then revising the draft, before it was submitted to the Legislature for adoption, had been directed by the statute, I have no doubt it would have added greatly to the value of the work." The importance of this preliminary examination is apparent, and we concur with the suggestion of the Chancellor.

The proper distribution of the reports to joint committees of both houses, and a thorough scrutiny bestowed by them and the Legislature upon their provisions, will tend greatly to the detection of any errors, and lead to the adoption of proper alterations and amendments.

It was never supposed, that by entrusting to the Commissioners of the Code, the duty of suggesting amendments in the law; that any alterations they might propose, would be adopted, without the most careful and deliberate consideration of the Legislature. For any changes in the law, the Legislature are responsible. The Constitution never intended to make that body subservient to any commission; nor have the people yet sanctioned the idea or acceded to the doctrine, that it is wiser to throw into the hands of a mere board of officers, the power to legislate for the State at large, or to prescribe laws for the people, than it is to leave that power, with all the responsibilities attached to its exercise in the hands of their representatives: and in submitting some portions of our labors, we ask that it may receive the most considerate examination, that whatever errors, and there are doubtless many, that may be found, should be corrected, and any defects supplied. It must occur, in the course of the revision of the public statutes, and in adapting them to the amended Constitution, as in the former revision, that provisions intended to be referred to some other parts of the work, could more systematically be included in the titles reported, and in many cases valuable improvements, not originally contemplated, may either occur to us, or be suggested by the Legislature. It was found expedient by the revisers, while the statutes were passing through the Legislature, to make alterations and amendments in the chapters submitted, and in some cases, we believe, whole chapters were reprinted under their directions. A similar course will, doubtless, be found necessary in the prosecution of the labors of the Commissioners.

We have omitted, in the order adopted by the Revised Statutes, the general classification of the civil officers of the State, into legislative, executive, judicial and administrative, and have in chapter 2, designated the officers to whom that chapter relates as judicial, state, and county officers. The Constitution seems to require a new designation of judicial officers. "No judicial officer, except justices of the peace, shall receive to his own use, any fees or perquisites of office." "All judicial officers of cities and villages shall be elected," &c., Const. Art. 6, § 18-20. It also prescribes the manner of electing or appointing county, city, town, and village officers. These provisions have led us to suppose a general designation of judicial, state, county, city, town and village officers necessary, in reference to the mode of their election or appointment, and that the former designation of judicial officers, including sheriffs, clerks, notaries public, commissioners of deeds, &c., inappropriate under the Constitution. They are not regarded as among that class prohibited from taking fees.



The classification of officers, as legislative, executive, judicial and administrative, is necessary for applying to them general provisions of law. This classification has been prepared, but the Constitution having in many respects changed the powers of officer, we have deemed it proper to omit, for the present, the printing of any title containing this general designation, until all the provisions are framed defining the powers of the public officers. It may then, in the final order of the work, occupy the place it now holds in the arrangement of the Revised Statutes.

We have adopted a new arrangement of the Statutes. The object is to have the books, chapters, titles and sections numbered consecutively throughout the whole work, so that any quotation may be made by a single reference. This arrangement is unimportant, otherwise than as matter of convenience. Care, however, should be observed to embrace analogous subjects within appropriate chapters and titles.

We herewith submit, for the consideration of the Legislature, four chapters, containing with the exception above mentioned, the subjects embraced in the first six chapters of the Revised Statutes. For the reasons stated in the notes to the first five titles of chapter one, we have omitted to print the description of the boundaries of counties, towns, cities, and villages. Such descriptions form about two hundred pages of an octavo volume. These territorial divisions are continually undergoing changes, and the propriety of incorporating the statutes, defining these divisions into a body of permanent law, is questionable. They might be contained in a separate volume, and periodically revised by the State engineer and surveyor, under general provisions of law.

We have adverted to the subjects that properly fall within the first branch or division of the statutes, in order to bring to the attention of the Legislature, the nature as well as objects of the provisions, which we deem necessary to be incorporated into the public law.

These laws are, necessarily, to be framed upon some settled views of public policy, and just appreciation of their practical bearing upon the general interests of the State. Their adaptation to the Constitution requires the exercise of the power, conferred upon the Commissioners, of suggesting alterations and amendments, and therefore it is proper we should state the nature of those amendments, and the general purposes to be effected by them. This we have attempted to do as fully as the nature of this communication will permit.

A. WORDEN,  
SETH C. HAWLEY.

ALBANY, March, 1849.



# ANALYSIS

Of Chapters 1, 2, 3 and 4, of the New-York Code, containing Titles from 1 to 44, inclusive; and Sections from 1 to 533, inclusive.

CHAPTER I.—Of the boundaries of the State; Its Sovereignty and Jurisdiction; Cessions to the United States; Counties and Cities; Towns and Wards; Judicial, Senate, Assembly and Congressional districts; Census and Enumeration of the inhabitants; The formation of Senate, Assembly, Judicial and Congressional districts, and the Bill of Rights, 1.

TITLE 1.—Of the boundaries of the State, 1.

2. Its Sovereignty and Jurisdiction, 2.
3. Places ceded to the United States, 3.
4. Of the several Counties and Cities, 5.
5. Of the several Towns and Wards, 5.
6. Of the Judicial districts, 6.
7. Of the Senate districts, 7.
8. Of the Assembly districts, 9.
9. Of Congressional districts, 21.
10. Of the Census and enumeration of the inhabitants, 24.
11. Of the formation of Senate, Assembly, Judicial and Congressional districts, 38.
12. The bill of rights, 41.

TITLE 1.—Of the boundaries of the State, 1.

Section 1. Description of the boundaries of the State.

TITLE 2.—Of the Sovereignty and Jurisdiction of the State, 2.

Section 2. State Sovereignty declared.

3. To what places it extends.

TITLE 3.—Of the places ceded to the United States, 3.

Section 3. Montock point in Suffolk county.

4. Part of Eaton's neck in Suffolk county.
5. Bedlows Island, Ellis or Oyster Island, and Governor's Island.
6. Great Gull, and little Gull Island.
7. Sands or Watch Point.
8. Bluff Point on Staten Island.
9. In the city of New-York.
10. In the Wallabout bay.
11. At Buffalo.
12. At Greenbush, Rensselaer county.
13. At New-Utrecht, Kings county.
14. At Rome, Oneida county.
15. At Rouse's Point, Clinton county.

16. Galoo Island, in Lake Ontario.

17. Island point and land under water in Lake Champlain.

18. Land at the mouth of Oswego river.

19. Land at the mouth of Genesee river.

20. Land in Sodus, Wayne county.

21. Extent of certain Cessions.

22. Oldfield Point, Suffolk county.

23. In New-Utrecht, Kings county.

24. In Islip, Suffolk county.

25. In Haverstraw, Rockland county.

26. Extent of Cessions.

27. At West-point, Orange county.

28. In Lyme, Jefferson county.

29. On Plumb Island, Suffolk county.

30. At Princes Bay, Richmond county.

31. On Staten Island.

32. At Watervliet and extent of Cession.

33. Lands at Rye, Westchester county.

34. Horse Island, Jefferson county.

35. Extent of Cession.

36. Land on Island of North Brothers, Queens county.

37. Lands in Esopus, Ulster county.

38. Lands at Watervliet, Albany county.

39. Conditions of Cessions.

40. When right ceded to vest.

41. Land, how taken, and damages appraised.

42. Land in Kings county.

43. Extent of Cession.

44. Duration of Cession.

45. Land on Staten Island.

46. Condition of Cession.

47. Lands in Ulster county.

48. Condition of Cession.

49. Lands in Oswego to be granted.

50. Conditions of grant.

51. Lands so granted exempt from State tax.

52. When land to revert.

53. Land at Black Rock and Fort Niagara.

54. Conditions and jurisdiction.

55. Exemption from taxes.

56. When to revert.

57. Lands at Black Rock to be ceded.

58. Conditions and use of Cession.



Section 59. Consent to the purchase of Land at Black Rock.

- 60. Lands at Black Rock to be ceded.
- 61. Conditions of Cession.
- 62. Exemption from taxes.
- 63. When to revert.
- 64. Consent to the purchase of land at Buffalo, the mouth of Genesee River and near Sacket's Harbor, and islands in St. Lawrence.
- 65. Conditions of Cession.
- 66. Jurisdiction.
- 67. Jurisdiction, when to vest.
- 68. Lands, how taken, and damages appraised.
- 69. Exemption from taxation.
- 70. Lands at Sacket's Harbor ceded.
- 71. Consent to the purchase of Islands in the River St. Lawrence.
- 73. Purposes of the Cession.
- 74. Conditions of the Cession.
- 75. When Jurisdiction to vest.
- 76. Lands to be taken, and damages appraised.
- 77. Exemption from taxation.
- 78. Consent to the purchase of North Dumplin or Hammock Island.
- 79. Purpose of Cession.
- 80. Condition of Cession.
- 81. When Jurisdiction to vest.
- 82. Lands to be taken, and damages appraised.
- 83. Exemption from taxes.
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- 86. Their boundaries.
- 87. Lines to be taken as the magnetic needle pointed at the time of their establishment.
- 88. Rights of persons not to be affected by the description of boundaries.
- 89. Division line, between counties separated by a river or creek.
- 90. In what counties islands, crossed by boundary lines, to be deemed.
- 91. Concurrent jurisdiction of Kings, Richmond and New-York, over certain waters.
- 92. By what officers, process may be served on waters of certain lakes.
- 93. Names of the several cities.
- 94. Boundaries of the several cities.

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- 180. To transmit them to the clerks of counties.
- 181. Marshals in cities, how appointed.
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- 183. Omissions to appoint.
- 184. Vacancies supplied.
- 185. Certificates of appointment.
- 186. Duty of Marshal.
- 187. Marshal to be furnished with blank returns.
- 188. To enumerate the inhabitants.
- 189. To obtain statistical information.
- 190. Form of returns and abstracts.
- 191. Persons to be enumerated.
- 192. Returns how verified.
- 193. Copy of returns to be delivered to county clerk.
- 194. Returns of county clerk to Secretary of State.
- 195. Secretary of State to report to Legislature.
- 196. Expenses how paid.
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- 195. Of the apportionment of members of the Assembly and of the Assembly districts.
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- 207. Unlawful fines prohibited.
- 208. Excessive bail and cruel punishment prohibited.
- 209. Elections to be free and voters protected.
- 210. Right of petition, and to represent grievances, secured.
- 211. Right to assemble and petition to be inviolate.
- 212. Liberty of speech, and of the press secured.
- 213. The truth a justification in prosecutions for libel, and jurors, judges of the law and fact.
- 214. Liberties of the people to be inviolate.
- 215. Persons to be prosecuted for crimes only in the manner prescribed.



- Section 216. Personal security, property and liberty protected. Illegal prosecutions prohibited.
217. Trial by jury secured.
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219. Rights of persons on trial for crimes.
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- 16.—Of the election of Secretary of State, Comptroller, Treasurer, Attorney-General, State Engineer and Surveyor, Clerk of the Court of Appeals, Canal Commissioners and Inspectors of State Prisons, and of vacancies, 60.
- 17.—Of the election of Judges of the Court of Appeals and Justices of the Supreme Court, their terms of office, and of filling vacancies therein, 62.
- 18.—Of the election of Senators and Members of Assembly; disqualification of Members; and vacating their seats, 64.
- 19.—Of the election of officers in counties; duration of terms of office; and of supplying vacancies, 66.
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532. Allowance to clerks of polls for services.

533. Secretary of State to cause this chapter to be printed and distributed to certain officers.



# New-York Code.

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## BOOK I.

### Of Public, Constitutional and Administrative Law.

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#### CHAPTER 1.

Of the boundaries of the State; Its Sovereignty and Jurisdiction: Cessions to the United States; Counties and Cities; Towns and Wards: Judicial, Senate, Assembly and Congressional districts; Census and Enumeration of the inhabitants; The formation of Senate, Assembly, Judicial and Congressional districts, and the Bill of Rights.

**TITLE 1. Of the boundaries of the State.**

2. Its Sovereignty and jurisdiction.
3. Places ceded to the United States.
4. Of the several Counties and Cities.
5. Of the several Towns and Wards.
6. Of the Judicial districts.
7. Of the Senate districts.
8. Of the Assembly districts.
9. Of Congressional districts.
10. Of the Census and enumeration of the inhabitants.
11. Of the formation of Senate, Assembly, Judicial and Congressional districts.
12. The bill of rights.

#### TITLE 1.

##### Of the boundaries of the State.

##### SECTION 1. Description of the Boundaries of the State.

It is not deemed necessary to print, at this time, the description of the boundaries of the State. No other changes have taken place therein, except by the treaty of 1842, and the arrangement made, in 1838, with New Jersey.



## TITLE 2.

## Of the Sovereignty and Jurisdiction of the State.

SECTION 2. State Sovereignty declared.

3. To what places it extends.

## SEC. 2.

1 The sovereignty and jurisdiction of the state reside in the people  
2 thereof, and no authority can be exercised therein, but such as is de-  
3 rived from or granted by them.

## SEC. 3.

1 The territory within the boundaries of the state, as declared in Title 1,  
2 and the inhabitants thereof are subject to the jurisdiction and sovereign-  
3 ty of the state ; but the extent of such sovereignty and jurisdiction, over  
4 places ceded to the United States, is qualified by the terms of such  
5 cessions.

The grants of power to the United States, and the limitations upon State authority, in the Constitution of the United States, have deprived the several States of numerous attributes of Sovereignty, which they would otherwise possess.

The Constitution of the United States, and the laws enacted by Congress under its authority, and all treaties made by the United States, are the Supreme law of the land, and judges in every State are bound thereby, any thing in the Constitution and laws of the State to the contrary notwithstanding. Cons. U. S. Art. 6.

The limitations upon State Sovereignty are either direct or implied.

The special grant of a power to the United States, does not necessarily exclude a State from the exercise of the same power ; but whenever the objects for which it is granted, require its exclusive exercise by Congress, a State is as much prohibited from the exercise thereof as if expressly forbidden.

The Constitution of the United States also imposes obligations, and operates imperatively upon the States and the Legislatures thereof.

The judicial power of the United States extends to all cases in law and equity, arising under the Constitution, the laws of the United States, and treaties made, and which shall be made, under its authority; to all cases affecting ambassadors, other public ministers and consuls ; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party ; to controversies between two or more States ; between citizens of different States ; between citizens of the same State, claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens or subjects ; but not to any suit in law or equity, commenced, or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.



The nature and extent of the jurisdiction of the federal government, and the limitations upon State sovereignty are to be, ultimately and finally, declared in the courts of the United States.

The laws of Congress, and the decisions of the federal courts, constitute a large and important branch of public and private law, affecting the powers of the States, and the rights of the people.

It would be a great public advantage, if the cases in which questions, relating to the powers and jurisdiction of the States, have been adjudicated in the federal courts, could be collected and appropriately arranged, so that a knowledge of this branch of the law, could be more easily attained, by all whose duty it may be to understand or apply its provisions.

It will become necessary, in the prosecution of our duties, to have reference to cases decided in the United States courts, and we shall endeavor to make such notes and abstracts of them as are proper to be taken into consideration in framing our own system of laws.

### TITLE 3.

#### Of the places ceded to the United States.

- SECTION 3.** Montock point in Suffolk county.
4. Part of Eaton's neck in Suffolk county.
  5. Bedlows Island, Ellis or Oyster Island, and Governor's Island.
  6. Great Gull, and little Gull Island.
  7. Sands or Watch Point.
  8. Bluff Point on Staten Island.
  9. In the city of New-York.
  10. In the Wallabout bay.
  11. At Buffalo.
  12. At Greenbush, Rensselaer county.
  13. At New Utrecht, Kings county.
  14. At Rome, Oneida county.
  15. At Rouse's Point, Clinton county.
  16. Galoo Island, in Lake Ontario.
  17. Island point and land under water in Lake Champlain.
  18. Land at the mouth of Oswego river.
  19. Land at the mouth of Genesee river.
  20. Land in Sodus, Wayne county.
  21. Extent of certain Cessions.
  22. Oldfield Point, Suffolk county.
  23. In New Utrecht, Kings county.
  24. In Islip, Suffolk county.
  25. In Haverstraw, Rockland county.
  26. Extent of Cessions.
  27. At West-point, Orange county.
  28. In Lyme, Jefferson county.
  29. On Plumb Island, Suffolk county.
  30. At Princes Bay, Richmond county.
  31. On Staten Island.
  32. At Watervliet and extent of Cession.
  33. Lands at Rye, Westchester county.
  34. Horse Island, Jefferson county.
  35. Extent of Cession.
  36. Land on Island of North Brothers, Queens county.
  37. Lands in Esopus, Ulster county.



38. Lands at Watervliet, Albany county.
39. Conditions of Cession.
40. When right ceded to vest.
41. Land how taken and damages appraised.
42. Land in Kings county.
43. Extent of Cession.
44. Duration of Cession.
45. Land on Staten Island.
46. Condition of Cession.
47. Lands in Ulster county.
48. Condition of Cession.
49. Lands in Oswego to be granted.
50. Conditions of grant.
51. Lands so granted exempt from State tax.
52. When land to revert.
53. Land at Black Rock and Fort Niagara.
54. Conditions and jurisdiction.
55. Exemption from taxes.
56. When to revert.
57. Lands at Black Rock to be ceded.
58. Conditions and use of Cession.
59. Consent to the purchase of Land at Black Rock.
60. Lands at Black Rock to be ceded.
61. Conditions of Cession.
62. Exemption from taxes.
63. When to revert.
64. Consent to the purchase of land at Buffalo, the mouth of Genesee River and near Sackets Harbor, and islands in St. Lawrence.
65. Conditions of Cession.
66. Jurisdiction.
67. Jurisdiction when to vest.
68. Lands how taken, and damages appraised.
69. Exemption from taxation.
70. Lands at Sacket's Harbor Ceded.
71. Consent to the purchase of Islands in the River St. Lawrence.
73. Purposes of the Cession.
74. Conditions of the Cession.
75. When Jurisdiction to vest.
76. Lands to be taken, and damages appraised.
77. Exemption from taxation.
78. Consent to the purchase of North Dumplin or Hammock Island.
79. Purpose of Cession.
80. Condition of Cession.
81. When Jurisdiction to vest.
82. Lands to be taken, and damages appraised.
83. Exemption from taxes.
84. Treasury not to be charged.
85. Conditions in respect to future Cessions of lands, and to the assent of the Legislature to purchase.

The bounds of the places ceded, are not in every case ascertained, and it is not deemed necessary to print the several Sections of this Title, of which the head or marginal notes are given. All the Boundaries of the cessions made by the commissioners of the land office, prior to the adoption of the first part of the Revised Statutes, were incorporated therein. From the acts that have since been passed, the boundaries of the places, to which the United States have acquired title, cannot be ascertained. It is important to enumerate and describe all the exceptions to the jurisdiction of the State. For this purpose information from the departments at



Washington is necessary, and has been solicited, with a view of more accurately defining the Territories within the limits of this State, to which its jurisdiction does not extend.

Many of the acts, making direct cessions, are drawn without due consideration. The territory ceded is not defined with certainty. By other acts the right to purchase of individuals, and to take by appraisal, is granted, without any provision by which the State authorities can ascertain, from any record required to be made, whether the power to purchase has been exercised, or to what extent the United States have acquired title.

It is proposed to add a new section, by which all grants of right to acquire title shall be void, unless exercised within a specified period, and the deed of purchase, or the proceedings by which title is acquired, recorded in the office of the Secretary of State, and that every act making a direct cession, shall specify by metes and bounds, the territory ceded. Great embarrassment will result, if some such rule is not adopted and rigidly adhered to, as otherwise it would be difficult to ascertain from the statutes, or archives of the State, the limits of its own jurisdiction, or that of Congress, within the known boundaries thereof: This title will, if the necessary information is obtained, be perfected and submitted in time to be acted upon, in connection with the other portion of the Statutes, to which it appropriately appertains.

## TITLE 4.

### Of the several Counties and Cities.

- SECTION** 85. Names of the several counties.  
 86. Their Boundaries.  
 87. Lines to be taken as the magnetic needle pointed at the time of their establishment.  
 88. Rights of persons not to be affected by the description of Boundaries.  
 89. Division line, between counties separated by a river or creek.  
 90. In what counties islands, crossed by boundary lines, to be deemed.  
 91. Concurrent Jurisdiction of Kings, Richmond, and New-York, over certain waters.  
 92. By what officers, process may be served on waters of certain lakes.  
 93. Names of the several Cities.  
 94. Boundaries of the several Cities.

## TITLE 5.

### Of the several Towns and Wards.

This title will contain seventy-six sections, descriptive of the boundaries and wards. Together with title four it had been completed, from the session laws passed since 1830, to correspond with the order adopted in this Chapter, prior to the publication of the third volume, of the third edition, of the Revised Statutes.

In that volume the same matter is contained under a different arrangement.

It was supposed until after this portion of the work was completed, that the project of publishing such volume of the Revised Statutes, was abandoned.

Under the circumstances, it is proper to omit printing Titles 4 and 5, until the publication of the First Book of "The Code" entire.

By the 6th Title of the second Chapter of the first Part of the Revised Statutes, it is provided, that when an application shall be made to the Legislature, for the creation or alteration of a city, county, town or ward, the persons applying shall



furnish an accurate survey and map of the territory, to be filed in the office of the Surveyor General, in case the law applied for should be passed.

Upon examination in that office, it is discovered that this provision, has in very few instances been complied with.

The boundaries contained in the numerous acts passed since 1830, are so general and imperfect, as to be insufficient guides to the actual lines of these divisions of the State.

These new divisions are generally formed of portions of one or more of the existing divisions, and though the boundaries of the new division, are, some instances, intelligible, the old divisions are left without any description of their new bounds upon the Statute Book, and in the process of numerous changes, in some instances, become wholly undefined.

If there is occasion for having these provisions upon our Statute Book at all, there is a propriety in their being made more perfect than can be done from any records, laws or data now existing.

This branch of our law is always important, in respect to jurisdiction, to the punishment of crime, to the execution of process, to the assessment and levy of taxes, and the title to property under tax sales, to the support of paupers, and the rights of the voter at elections, and the eligibility of persons to office.

It is submitted to the legislature, whether provision shall not be made, for a survey of these several divisions of the State, to the end, that the map of the State, may be made evidence of its boundaries, and divisions, and so that these lines may be incorporated into the law, with such accuracy, that a surveyor, with the statute in his hand, can determine the actual location of each of such boundaries.

The following is an average specimen, of the legal description of the boundaries of the smaller divisions of the State.

"Beginning twenty-five chains west from the south east corner of lot number five of McKees patent, and running thence, easterly, to the School house south of the dwelling house, now or late of Rufus Ingalls: *Thence easterly, on a direct line, to the heighth of land north-east of the house, now or late of Isaac Jennings, and the same line continued to the east bounds of the county*; thence along the same, northerly, to the first allotment of the Belvidere patent; thence west along the same to a point twenty-five chains east of the easterly line of McKees patent, and thence southerly on a straight line to the place of beginning." 3. R. S. 3d edition pg. 94.

It will be observed, that one of these lines has no defined point of starting, has no certain course nor distance, nor yet, any definite or fixed object towards which it runs.

To a line, so described, it is not possible to give actual location, and yet it is not possible to make a better description without a survey.

## TITLE 6.

### Of the Judicial districts.

#### SECTION 171. Number of districts and their Boundaries.

#### SEC. 171.

- 1 The state is divided into eight judicial districts, as follows:

Const. Art. 6. § 4.

- 2 The First district, consists of the city and county of New-York.



3 The Second, of the counties of Richmond, Suffolk, Queens, Kings,  
4 Westchester, Orange, Rockland, Putnam, Dutchess.

5 The Third, of the counties of Columbia, Sullivan, Ulster, Greene, Al-  
6 bany, Schoharie, Rensselaer.

7 The Fourth, of the counties of Warren, Saratoga, Washington, Essex,  
8 Franklin, St. Lawrence, Clinton, Montgomery, Hamilton, Fulton,  
9 Schenectady.

10 The Fifth, of the counties of Onondaga, Oneida, Oswego, Herkimer,  
11 Jefferson, Lewis.

12 The Sixth, of the counties of Otsego, Delaware, Madison, Chenango  
13 Broome, Tioga, Chemung, Tompkins, Courtland.

14 The Seventh, of the counties of Livingston, Wayne, Seneca, Yates,  
15 Ontario, Steuben, Monroe, Cayuga.

16 The Eighth, of the counties of Erie, Chautauque, Cattaragus, Orleans,  
17 Niagara, Genesee, Allegany, Wyoming.

Session laws, 1847, chap. 241.

## TITLE 7.

### Of the Senate Districts.

#### SECTION 172. Number and description of Senate Districts.

##### SEC. 172.

1 The State is divided into thirty-two Senate Districts, numbered and  
2 described as follows:

3 District number one, consists of the counties of Suffolk, Richmond  
4 and Queens.

5 District number two, of the County of Kings.

6 District number three, of the first, second, third, fourth, fifth and  
7 sixth wards of the city of New-York.

8 District number four, of the seventh, tenth, thirteenth and seventeenth  
9 wards of the city of New-York.



10 District number five, of the eighth, ninth and fourteenth wards of  
11 the city of New-York.

12 District number six, of the eleventh, twelfth, fifteenth, sixteenth and  
13 eighteenth wards of the city of New-York.

[NOTE. The Senate Districts of the city and county of New-York were arranged by the Supervisors pursuant to Art. 3, Sec. 3, Const.]

14 District number seven, of the counties of Westchester, Putnam and  
15 Rockland.

16 District number eight, of the counties of Dutchess and Columbia.

17 District number nine, of the counties of Orange and Sullivan.

18 District number ten, of the counties of Ulster and Greene.

19 District number eleven, of the counties of Albany and Schenectady.

20 District number twelve, of the county of Rensselaer.

21 District number thirteen, of the counties of Washington and Saratoga.

22 District number fourteen, of the counties of Warren, Essex, and  
23 Clinton.

24 District number fifteen, of the counties of St. Lawrence and Franklin.

25 District number sixteen, of the counties of Herkimer, Hamilton,  
26 Fulton and Montgomery.

27 District number seventeen, of the counties of Schoharie and De-  
28 laware.

29 District number eighteen, of the counties of Otsego and Chenango.

30 District number nineteen, of the county of Oneida.

31 District number twenty, of the counties of Madison and Oswego.

32 District number twenty-one, of the counties of Jefferson and Lewis.

33 District number twenty-two, of the county of Onondaga.

34 District number twenty-three, of the counties of Cortland, Broome  
35 and Tioga.

36 District number twenty-four, of the counties of Cayuga and Wayne.



37 District number twenty-five, of the counties of Tompkins, Seneca  
38 and Yates.

39 District number twenty-six, of the counties of Steuben and Che-  
40 mung.

41 District number twenty-seven, of the county of Monroe.

42 District number twenty-eight, of the counties of Orleans, Gene-  
43 see and Niagara.

44 District number twenty-nine, of the counties of Ontario and Liv-  
45 ington.

46 District number thirty, of the counties of Allegany and Wyoming.

47 District number thirty-one, of the county of Erie.

48 District number thirty-two, of the counties of Chautauque and Cat-  
49 taraugus.

## TITLE 8.

### Of the Assembly Districts.

SECTION 173. Whole number.

174. Appointment of members and description of Districts.

#### SEC. 173.

1 The State is divided into one hundred and twenty-eight Assembly  
2 Districts.

Const. Art. 3, § 5.

#### SEC. 174.

1 The number of members of Assembly, to be chosen in the several  
2 counties, and the assembly districts, into which the counties are divi-  
3 vided, are as follows:

4 ALBANY COUNTY is entitled to four members, and is divided into four  
5 districts, as follows:

6 *First district.*—First and second wards of the city of Albany; towns  
7 of Bethlehem, Coeymans, Westerlo, Rensselaerville.

[CODE.]



8 *Second district.*—Tenth ward of the city of Albany; towns of Guil-  
9 derland, New Scotland, Knox, Bern.

10 *Third district.*—Third, fourth, fifth, sixth and eighth wards of the  
11 city of Albany.

12 *Fourth district.*—Seventh and ninth wards of the city of Albany, and  
13 the town of Watervliet.

14 ALLEGANY COUNTY is entitled to two members, and is divided into two  
15 districts, as follows:

16 *First district.*—Towns of Centerville, Hume, Granger, Grove, Ossian,  
17 Rushford, Caneadea, Allen, Birdsall, Burns, New Hudson, Belfast,  
18 Angelica.

19 *Second district.*—Towns of West Almond, Almond, Alfred, Amity  
20 Andover, Independence, Cuba, Friendship, Clarksville, Wirt, Genesee,  
21 Bolivar, Scio.

22 BROOME COUNTY is entitled to one member, and constitutes one as-  
23 sembly district.

24 CATTARAUGUS COUNTY is entitled to two members, and is divided into  
25 two districts, as follows:

26 *First district.*—Towns of Ashford, Ellicottville, Carrolton, Burton,  
27 Humphrey, Franklinville, Machias, Yorkshire, Freedom, Farmers-  
28 ville, Lyndon, Rice, Hinsdale, Olean, Portville.

29 *Second district.*—Towns of Great Valley, Little Valley, Mansfield,  
30 Otto, Persia, New Albion, Napoli, Coldspring, Randolph, Connewan-  
31 go, Leon, Dayton, Perrysburgh.

32 CAYUGA COUNTY is entitled to three members, and is divided into  
33 three districts, as follows:

34 *First district.*—Towns of Sterling, Victory, Ira, Conquest, Cato,  
35 Mentz.



36 *Second district.*—Towns of Brutus, Sennett, Aurelius, Owasco, Flem-  
37 ing, Springport, and the city of Auburn.

38 *Third district.*—Towns of Ledyard, Scipio, Niles, Venice, Moravia,  
39 Sempronius, Genoa, Locke, Summer Hill.

40 CHAUTAUQUE COUNTY is entitled to two members, and is divided into  
41 two districts, as follows:

42 *First district.*—Towns of Pomfret, Sheridan, Hanover, Villenova,  
43 Arkwright, Charlotte, Cherrycreek, Ellington, Gerry, Poland, Ellicott,  
44 Carroll.

45 *Second district.*—Towns of Portland, Stockton, Ellery, Busti, Har-  
46 mony, Westfield, Chautauque, Ripley, Mina, Sherman, French Creek,  
47 Clymer.

48 CHEMUNG COUNTY is entitled to one member, and constitutes one as-  
49 sembly district.

50 CHENANGO COUNTY is entitled to two members, and is divided into  
51 two districts, as follows:

52 *First district.*—Towns of Columbus, Lincklaen, Norwich, New Ber-  
53 lin, Otselic, Pharsalia, Pitcher, Plymouth, Smyrna, Sherburne.

54 *Second district.*—Towns of Bainbridge, Coventry, German, Guilford,  
55 Greene, Macdonough, Oxford, Preston, Smithville.

56 CLINTON COUNTY is entitled to one member, and constitutes one as-  
57 sembly district.

58 COLUMBIA COUNTY is entitled to two members, and is divided into two  
59 districts, as follows:

60 *First district.*—First and second wards of the city of Hudson, towns  
61 of Greenport, Claverack, Livingston, Taghkanick, Copake, German-  
62 town, Clermont, Gallatin, Ancram.

63 *Second district.*—Towns of New Lebanon, Canaan, Chatham, Kin-  
64 derhook, Stuyvesant, Stockport, Ghent, Austerlitz, Hillsdale.



65 CORTLAND COUNTY is entitled to one member, and constitutes one as-  
66 sembly district.

67 DELAWARE COUNTY is entitled to two members, and is divided into  
68 two districts, as follows:

69 *First district.*—Towns of Colchester, Franklin, Hamden, Hancock,  
70 Masonville, Sidney, Tompkins, Walton, Delhi.

71 *Second district.*—Towns of Andes, Bovina, Harpersfield, Kortright,  
72 Meredith, Middletown, Stamford, Davenport, Roxbury.

73 DUTCHESS COUNTY is entitled to three members, and is divided into  
74 three districts, as follows:

75 *First district.*—Towns of Fishkill, Beekman, Pawlings, Dover, Union  
76 Vale, La Grange.

77 *Second district.*—Towns of Poughkeepsie, Pleasant Valley, Hyde  
78 Park, Clinton.

79 *Third district.*—Towns of Washington, Amenia, Stanford, North  
80 East, Pine Plains, Milan, Rhinebeck, Red Hook.

81 ERIE COUNTY is entitled to four members, and is divided into four  
82 districts, as follows:

83 *First district.*—First, second, third and fifth wards of the city of Buf-  
84 falo.

85 *Second district.*—Fourth ward of the city of Buffalo, and the towns  
86 of Black Rock, Tonawanda, Amherst and Clarence.

87 *Third district.*—Towns of Newstead, Chicktawaga, Hamburg, Au-  
88 rora, Wales, Alden, Lancaster.

89 *Fourth district.*—Towns of Evans, Eden, Boston, Colden, Holland,  
90 Sardinia, Concord, Collins, Brant.

91 ESSEX COUNTY is entitled to one member, and constitutes one elec-  
92 tion district.



93 FRANKLIN COUNTY is entitled to one member, and constitutes one  
94 election district.

95 FULTON AND HAMILTON COUNTIES are entitled to one member, and  
96 constitute one election district.

97 GENESEE COUNTY is entitled to two members, and is divided into two  
98 districts, as follows:

99 *First district.*—Towns of Alabama, Alexander, Batavia, Darien, Elba,  
100 Oakfield, Pembroke.

101 *Second district.*—Towns of Bergen, Bethany, Byron, Leroy, Pavillion,  
102 Stafford.

103 GREENE COUNTY is entitled to two members, and is divided into two  
104 districts, as follows:

105 *First district.*—Towns of Athens, Catskill, Cairo, Hunter, Lexington.

106 *Second district.*—Towns of Coxsackie, Durham, Greenville, New  
107 Baltimore, Prattsville, Windham.

108 HERKIMER COUNTY is entitled to two members, and is divided into  
109 two districts, as follows:

110 *First district.*—Towns of Fairfield, Herkimer, Little Falls, Manheim,  
111 Newport, Norway, Ohio, Russia, Salisbury, Wilmurt.

112 *Second district.*—Towns of Columbia, Danube, Frankfort, German  
113 Flatts, Litchfield, Schuyler, Stark, Warren, Winfield.

114 JEFFERSON COUNTY is entitled to three members, and is divided into  
115 three districts, as follows:

116 *First district.*—Towns of Watertown, Henderson, Adams, Ellisburgh,  
117 Lorraine, Rodman, Hounsfield.

118 *Second district.*—Towns of Rutland, Champion, Wilna, Philadelphia,  
119 Antwerp, Le Ray, Theresa, Alexandria.



120 *Third district.*—Towns of Brownville, Lyme, Orleans, Clayton,  
121 Pamela.

122 KINGS COUNTY is entitled to three members, and is divided into three  
123 districts, as follows:

124 *First district.*—The eighth and ninth wards of the city of Brooklyn,  
125 towns of Williamsburgh, Bushwick, Flatbush, Flatlands, Gravesend,  
126 New Utrecht.

127 *Second district.*—First, second, third and sixth wards of the city of  
128 Brooklyn.

129 *Third district.*—Fourth, fifth and seventh wards of the city of Brook-  
130 lyn.

131 LEWIS COUNTY is entitled to one member, and constitutes one assem-  
132 bly district.

133 LIVINGSTON COUNTY is entitled to two members, and is divided into  
134 two districts, as follows:

135 *First district.*—Towns of Avon, Caledonia, Lima, Livonia, Geneseo,  
136 Groveland, Leicester, York.

137 *Second district.*—Towns of Mount Morris, Sparta, West Sparta, North  
138 Dansville, Springwater, Conesus, Nunda, Portage.

139 MADISON COUNTY is entitled to two members, and is divided into two  
140 districts, as follows:

141 *First district.*—Towns of DeRuyter, Nelson, Eaton, Georgetown, Le-  
142 banon, Madison, Hamilton, Brookfield.

143 *Second district.*—Towns of Cazenovia, Sullivan, Lenox, Fenner,  
144 Smithfield, Stockbridge.

145 MONROE COUNTY is entitled to three members, and is divided into  
146 three districts, as follows:



147 *First district.*—Towns of Brighton, Henrietta, Irondequoit, Mendon,  
148 Penfield, Perrinton, Pittsford, Rush, Webster.

149 *Second district.*—The city of Rochester.

150 *Third district.*—Towns of Clarkson, Chili, Gates, Greece, Ogden,  
151 Parma, Riga, Sweden, Wheatland.

152 MONTGOMERY COUNTY is entitled to two members, and is divided into  
153 two districts, as follows :

154 *First district.*—Towns of Amsterdam, Mohawk, Florida, Glen,  
155 Charleston.

156 *Second district.*—Towns of Palatine, St. Johnsville, Minden, Canajo-  
157 harie, Root.

158 NEW-YORK CITY AND COUNTY is entitled to sixteen members, and is  
159 divided into sixteen districts, as follows :

160 *First district.*—The first district, consists of the first and second  
161 wards of the said city.

162 *Second district.*—Third and sixth wards.

163 *Third district.*—Fourth ward.

164 *Fourth district.*—Fifth ward.

165 *Fifth district.*—Seventh ward.

166 *Sixth district.*—Eighth ward.

167 *Seventh district.*—Ninth ward.

168 *Eighth district.*—Tenth ward.

169 *Ninth district.*—Eleventh ward.

170 *Tenth district.*—Twelfth ward.

171 *Eleventh district.*—Thirteenth ward.

172 *Twelfth district.*—Fourteenth ward.

173 *Thirteenth district.*—Fifteenth ward.

174 *Fourteenth district.*—Sixteenth ward.

175 *Fifteenth district.*—Seventeenth ward.



176 *Sixteenth district.*—Eighteenth ward.

177 NIAGARA COUNTY is entitled to two members, and is divided into two  
178 districts, as follows :

179 *First district.*—Towns of Royalton, Lockport, Pendleton, Wheat-  
180 field, Niagara.

181 *Second district.*—Towns of Somerset, Hartland, Newfane, Wilson,  
182 Cambria, Porter, Lewiston.

183 ONEIDA COUNTY is entitled to four members, and is divided into four  
184 districts, as follows :

185 *First district.*—Towns of New-Hartford, Whitestown and the City of  
186 Utica.

187 *Second district.*—Towns of Augusta, Bridgewater, Kirkland, Marshall,  
188 Sangerfield, Paris, Vernon, Westmoreland.

189 *Third district.*—Towns of Annsville, Camden, Florence, Rome, Vero-  
190 na, Vienna.

191 *Fourth district.*—Towns of Ava, Boonville, Deerfield, Floyd, Lee,  
192 Marcy, Remsen, Steuben, Trenton, Western.

193 ONONDAGA COUNTY is entitled to four members, and is divided into  
194 four districts, as follows :

195 *First district.*—Towns of Camillus, Clay, Elbridge, Lysander, Van  
196 Buren.

197 *Second district.*—Towns of Marcellus, Onondaga, Otisco, Skaneateles,  
198 Spafford, Tully.

199 *Third district.*—Towns of Cicero, Salina, Geddes and the City of  
200 Syracuse.

201 *Fourth district.*—Towns of DeWitt, Fabius Lafayette, Manlius, Pompey.

202 ONTARIO COUNTY is entitled to two members, and is divided into two  
203 districts, as follows :



203 *First district.*—Towns of Seneca, Gorham, Hopewell, Phelps, Man-  
204 chester, Farmington.

205 *Second district.*—Towns of Victor, East Bloomfield, West Bloomfield  
206 Richmond, Canadice, Bristol, South Bristol, Naples, Canandaigua.

207 ORANGE COUNTY is entitled to three members, and is divided into  
208 three districts, as follows:

209 *First district.*—Towns of Newburgh, New-Windsor, Montgomery,  
210 Crawford.

211 *Second district.*—Towns of Cornwall, Bloomingrove, Hamptonburgh,  
212 Goshen, Wallkill, Chester.

213 *Third district.*—Towns of Monroe, Warwick, Minisink, Deerpark,  
214 Mount Hope.

215 ORLEANS COUNTY is entitled to one member, and constitutes one as-  
216 sembly district.

217 OSWEGO COUNTY is entitled to two members, and is divided into two  
218 districts, as follows:

219 *First district.*—Towns of Granby, Oswego, Schroepfel, Volney, Han-  
220 nibal, New-Haven, Scriba, and the City of Oswego.

221 *Second district.*—Towns of Albion, Boylston, Greenboro, Mexico, Pa-  
222 lermo, Redfield, Sandy Creek, West Monroe, Amboy, Constantia,  
223 Hastings, Orwell, Parish, Richland, Williamstown.

224 OTSEGO COUNTY is entitled to three members, and is divided into three  
225 districts, as follows:

226 *First district.*—Towns of Cherry Valley, Springfield, Middlefield, De-  
227 catur, Westford, Worcester, Maryland.

228 *Second district.*—Towns of Otsego, Exeter, Richfield, Plainfield, Bur-  
229 lington, Hartwick, Edmeston, New-Lisbon.

230 *Third district.*—Towns of Milford, Oneonta, Otego, Unadilla, Butter-  
231 nuts, Laurens, Pittsfield.



232 PUTNAM COUNTY is entitled to one member, and constitutes one as-  
233 sembly district.

234 QUEENS COUNTY is entitled to one member, and constitutes one as-  
235 sembly district.

236 RENSSELAER COUNTY is entitled to three members, and is divided into  
237 three districts, as follows:

238 *First district.*—The city of Troy.

239 *Second district.*—Towns of Lansingburgh, Scaghticoke, Pittstown,  
240 Hoosick, Grafton, Petersburg, Berlin.

241 *Third district.*—Towns of Brunswick, Greenbush, Schodack, Sand-  
242 Lake, Nassau, Stephentown.

243 RICHMOND COUNTY is entitled to one member, and constitutes one as-  
244 sembly district.

245 ROCKLAND COUNTY is entitled to one member, and constitutes one as-  
246 sembly district.

247 ST. LAWRENCE COUNTY is entitled to three members, and is divided  
248 into three districts, as follows:

249 *First district.*—Towns of DePeyster, DeKalb, Fowler, Gouverneur,  
250 Hammond, Macomb, Morristown, Oswegatchie, Pitcairn, Rossie.

251 *Second district.*—Towns of Lisbon, Madrid, Norfolk, Canton, Russell,  
252 Hermon, Fine, Edwards, Pierrepont.

253 *Third district.*—Towns of Brasher, Massena, Potsdam, Stockholm,  
254 Lawrence, Hopkinton, Colton, Parishville, Louisville.

255 SARATOGA COUNTY is entitled to two members, and is divided into two  
256 districts, as follows:

257 *First district.*—Towns of Ballston, Charlton, Clifton Park, Galway,  
258 Halfmoon, Malta, Milton, Stillwater, Waterford.

259 *Second district.*—Towns of Corinth, Day, Edinburgh, Greenfield, Had-



260 ley, Moreau, Northumberland, Providence, Saratoga, Saratoga-Springs,  
261 Wilton.

262 SCHENECTADY COUNTY is entitled to one member, and constitutes one  
263 assembly district.

264 SCHOHARIE COUNTY is entitled to two members and is divided into  
265 two districts, as follows:

266 *First district*—Towns of Esperance, Wright, Schoharie, Middleburgh,  
267 Broome, Blenheim, Conesville.

268 *Second district.*—Towns of Carlisle, Sharon, Seward, Cobleskill, Ful-  
269 ton, Summit, Jefferson.

270 SENECA COUNTY is entitled to one member, and constitutes one as-  
271 sembly district.

272 STEUBEN COUNTY is entitled to three members and is divided into  
273 three districts, as follows:

274 *First district.*—Towns of Bath, Wheeler, Prattsburgh, Pulteney, Ur-  
275 bana, Wayne, Tyrone, Reading.

276 *Second district.*—Towns of Woodhull, Cameron, Thurston, Addison,  
277 Lindley, Erwin, Campbell, Bradford, Orange, Hornby, Painted Post,  
278 Caton.

279 *Third district.*—Towns of Cohocton, Avoca, Dansville, Howard, Hor-  
280 nellsville, Hartsville, Canisteo, Jasper, Greenwood, Troupsburgh, West  
281 Union.

282 SUFFOLK COUNTY is entitled to two members, and is divided into two  
283 districts, as follows:

284 *First district.*—Towns of East Hampton, South Hampton, Shelter Is-  
285 land, Southold, Riverhead.

286 *Second district.*—Towns of Brookhaven, Smithtown, Huntington, Is-  
287 lip.



288 SULLIVAN COUNTY is entitled to one member, and constitutes one as-  
289 sembly district.

290 TIOGA COUNTY is entitled to one member, and constitutes one assem-  
291 bly district.

292 TOMPKINS COUNTY is entitled to two members, and is divided into two  
294 districts, as follows:

295 *First district.*—Towns of Lansing, Ulysses, Hector, Enfield, New-  
296 field.

297 *Second district.*—Towns of Groton, Dryden, Ithaca, Caroline, Danby.

298 ULSTER COUNTY is entitled to two members, and is divided into two  
299 districts, as follows:

300 *First district.*—Towns of Saugerties, Woodstock, Olive, Shandaken,  
301 Hurley, Marbletown, Rochester, Wawarsing.

302 *Second district.*—Towns of Kingston, Esopus, Rosendale, Lloyd, New  
303 Paltz, Marlborough, Plattekill, Shawangunk.

304 WARREN COUNTY is entitled to one member, and constitutes one as-  
305 sembly district.

306 WASHINGTON COUNTY is entitled to two members, and is divided into  
307 two districts, as follows:

308 *First district.*—Towns of Argyle, Cambridge, Easton, Fort-Edward,  
309 Greenwich, Jackson, Salem, White Creek.

310 *Second district.*—Towns of Dresden, Fort Ann, Granville, Hampton,  
311 Hartford, Hebron, Kingsbury, Putnam, Whitehall.

312 WAYNE COUNTY is entitled to two members, and is divided into two  
313 districts, as follows:

314 *First district.*—Towns of Butler, Galen, Huron, Lyons, Rose, Sodus,  
315 Savannah, Wolcott.

316 *Second district.*—Towns of Arcadia, Macedon, Marion, Ontario, Pal-  
317 myra, Walworth, Williamson.



318 WESTCHESTER COUNTY is entitled to two members, and is divided into  
319 two districts, as follows:

320 *First district.*—Towns of Bedford, Cortlandt, Lewisboro, New Castle,  
321 North-Salem, Ossining, Poundridge, Somers, Yorktown.

322 *Second district.*—Towns of East Chester, Greenburgh, Harrison, Mount  
323 Pleasant, Mamaroneck, North-Castle, New-Rochelle, Pelham, Rye,  
324 Scarsdale, Whiteplains, Yonkers, West Chester, West Farms.

325 WYOMING COUNTY, is entitled to one member and constitutes one as-  
326 sembly district.

327 YATES COUNTY, is entitled to one member, and constitutes one as-  
328 sembly district.

NOTE. The Constitution provides, that members of Assembly shall be chosen in single districts, and that, after each enumeration of inhabitants by the State, these districts shall be designated by the boards of Supervisors of the several counties, who are required to file a description of each district in the office of the Secretary of State and in the clerks office of their respective counties, specifying the number of each district and the population thereof, according to the last preceding State enumeration, as near as can be ascertained.

The Constitution further provides, that the apportionment and districts so made shall remain unaltered, until another enumeration shall be taken, under the provisions of Section 4, Article 3. of the Constitution.

The description of the districts, in this, title are taken from the returns made to the Secretary of State.

## TITLE 9.

### Of Congressional Districts.

SECTION 175. Description and enumeration of Congressional Districts.

176. Each District to elect one member.

177. Canvass in New-York and Hamilton.

#### SEC. 175.

1 The State is divided into thirty-four Congressional districts, as follows:

2 The First district consists of the counties of Suffolk and Queens.

3 The Second, of the counties of Richmond and Kings.

4 The Third, of the first, second, third, fourth and fifth wards of the  
5 city of New-York.



- 6 The Fourth, of the sixth, seventh, tenth and thirteenth wards.
- 7 The Fifth, of the eighth, ninth and fourteenth wards.
- 8 The Sixth, of the eleventh, twelfth, fifteenth, sixteenth and seven-  
9 tenth wards.
- 10 The Seventh, of the counties of Westchester and Rockland.
- 11 The Eighth, of the counties of Putnam and Dutchess.
- 12 The Ninth, of the counties of Orange and Sullivan.
- 13 The Tenth, of the counties of Ulster and Delaware.
- 14 The Eleventh, of the counties of Columbia and Greene.
- 15 The Twelfth, of the county of Rensselaer.
- 16 The Thirteenth, of the city and county of Albany.
- 17 The Fourteenth, of the counties of Washington and Essex.
- 18 The Fifteenth, of the counties of Warren, Franklin, Clinton, and  
19 townships number fifteen, thirty-two, seven, four, five and forty-one of  
20 Totten and Crossfield's purchase, within the county of Hamilton, and  
21 all the territory in said county lying north of said townships; and all  
22 those parts of the said county of Hamilton shall, for all the purpo-  
23 ses of any general or special election, of State and county officers,  
24 electors of president and vice-president, and representatives in Con-  
25 gress, be taken and deemed to be a part of the town of Long Lake in  
26 said county.
- 27 The Sixteenth, of the counties of Saratoga, Schenectady, Fulton,  
28 and that part of the county of Hamilton not included in district num-  
29 ber fifteen.
- 30 The Seventeenth, of the counties of Herkimer and Montgomery.
- 31 The Eighteenth, of the counties of St. Lawrence and Lewis.
- 32 The Nineteenth, of the county of Jefferson.
- 33 The Twentieth, of the county of Oneida.
- 34 The Twenty-first, of the counties of Otsego and Schoharie.



- 35 The Twenty-second, of the counties of Chenango, Broome and Tioga.
- 36 The Twenty-third, of the counties of Madison and Oswego.
- 37 The Twenty-fourth, of the county of Onondaga.
- 38 The Twenty-fifth, of the counties of Cayuga and Cortland.
- 39 The Twenty-sixth, of the counties of Tompkins, Chemung and
- 40 Yates.
- 41 The Twenty-seventh, of the counties of Seneca and Wayne.
- 42 The Twenty-eighth, of the county of Monroe.
- 43 The Twenty-ninth, of the counties of Ontario and Livingston.
- 44 The Thirtieth, of the counties of Steuben and Allegany.
- 45 The Thirty-first, of the counties of Cattaraugus and Chautauque.
- 46 The Thirty-second, of the county of Erie.
- 47 The Thirty-third, of the counties of Wyoming and Genesee.
- 48 The Thirty-fourth, of the counties of Orleans and Niagara.

## SEC. 176.

- 1 Each district shall be entitled to elect one member.

## SEC. 177.

- 1 In the city and county of New-York, and in the county of Hamilton,
- 2 it shall be the duty of the board of canvassers of such counties to spe-
- 3 cify in their statement of votes given for Representatives in Con-
- 4 gress, the number of votes given in each of the Congressional districts
- 5 to which the several portions of said county, respectively, belong, to-
- 6 gether with the names of the persons for whom such votes were given,
- 7 and the number of votes given for each.



## TITLE 10.

**Of the enumeration of the inhabitants of the State.****SECTION 178.** Enumeration when to be taken.

179. Secretary of State, to cause blank returns and abstracts to be printed.
180. To transmit them to the clerks of counties.
181. Marshals in cities, how appointed.
182. Marshals in towns how appointed.
183. Omissions to appoint.
184. Vacancies supplied.
185. Certificates of appointment.
186. Duty of Marshal.
187. Marshal to be furnished with blank returns.
188. To enumerate the inhabitants.
189. To obtain Statistical information.
190. Form of returns and abstracts.
191. Persons to be enumerated.
192. Returns how verified.
193. Copy of returns to be delivered to county clerk.
194. Returns of county clerk to Secretary of State.
195. Secretary of State to report to Legislature.
196. Expenses how paid.
197. Penalty for refusing to give information.
198. Secretary of State to cause enumeration of Indians to be taken.
199. Maps to be made.

## SEC. 178.

- 1 An enumeration of the inhabitants of the state, shall be taken in the
- 2 year one thousand eight hundred and fifty-five, and every tenth year
- 3 thereafter.

Const. Art. 3. § 4.

## SEC. 179.

- 1 The secretary of state shall, in every such tenth year, cause
- 2 blank returns and abstracts, according to the forms and provisions
- 3 herein contained, together with copies of this Title to be printed.

## SEC. 180.

- 1 The secretary of state shall, on or before the first day of June, in
- 2 every such tenth year, transmit to each of the county clerks, twice as
- 3 many of such blank returns and copies of this Title as there are elec-
- 4 tion districts in their respective counties.



## SEC. 181.

1 The common council in each of the cities of the state, shall con-  
2 vene therein on the first Monday in July, in every such tenth year,  
3 and appoint one marshal for each election district, within their respec-  
4 tive cities, to take the enumeration of the inhabitants thereof.

## SEC. 182.

1 The supervisor, town clerk and justices of the peace, or a majority  
2 of them, in the several towns, shall constitute a board for the appoint-  
3 ment of Marshals. Such board shall convene on the said first Monday  
4 in July, in their respective towns, at the place where the last town meet-  
5 ing was held therein, and appoint one Marshall for each election dis-  
6 trict, within their respective towns, to take the enumeration of the in-  
7 habitants thereof.

## SEC. 183.

1 If the duty to be performed on the day named in the two preceding  
2 sections, shall not be performed on that day, in any city or town,  
3 it shall be performed on some other day, during the said month of July.

## SEC. 184.

1 If a vacancy occurs in the office of Marshal for any election dis-  
2 trict, it shall be supplied, by the authority making the original appoint-  
3 ment.

## SEC. 185.

1 A duplicate certificate of every appointment of a Marshal, shall  
2 be made by the clerk of each common council, and the members of  
[CODE.] 4



3 the board, or a majority thereof, making such appointment in the  
4 several towns; in which certificate, the boundaries of the election  
5 district, for which each Marshal is appointed, shall be set forth. One  
6 of such certificates shall be delivered to the person appointed Mar-  
7 shal, and the other filed in the clerks office of the county; and every  
8 appointment to fill a vacancy, shall supercede all prior appoint-  
9 ments.

SEC. 186.

1 It shall be the duty of each Marshal, to enumerate the inhabitants,  
2 in the election district for which he is appointed; and to perform such  
3 other duties, as are required by this title.

SEC. 187.

1 It shall be the duty of each county clerk, on or before the fifteenth  
2 day of July, in every such tenth year, to forward, or cause to be de-  
3 livered to the town clerk of each of the towns, and to the clerk of the  
4 common council of each of the cities, in his county, a sufficient num-  
5 ber of blank returns and copies of this title, to supply each Marshal of  
6 such town or city with duplicate sets.

SEC. 188.

1 Immediately on receiving such blank returns and copies of this title,  
2 every Marshal shall accurately enumerate the inhabitants re-  
3 siding in the election district of which he is Marshal, by mak-  
4 ing actual inquiry at every dwelling-house, of the head of every  
5 family, or, in the absence of the head of the family, of some other  
6 person residing therein, competent to answer such inquiries.



## SEC. 189.

1 Each Marshal shall obtain, and in such blank returns, insert, under  
2 the appropriate head of each column the statistical facts, indicated  
3 thereby.

## SEC. 190.

1 The blank returns and abstracts to be printed and furnished to the  
2 officers named in this title, shall be as follows:



Return of the enumeration of the Inhabitants of District No. \_\_\_\_\_ in the town or (ward) of \_\_\_\_\_ with the other statistical information required by law to be obtained in such district.

|    |                                                                                                                      |
|----|----------------------------------------------------------------------------------------------------------------------|
| 1  | The name of the head of each family.                                                                                 |
| 2  | No. of male persons in the family, including its head, if male.                                                      |
| 3  | No. of female persons in the same family, including its head, if female.                                             |
| 4  | No. of male persons in the same family subject to militia duty.                                                      |
| 5  | No. of persons in the same family entitled to vote for all officers elective by the people.                          |
| 6  | No. of aliens not naturalized in such family.                                                                        |
| 7  | No. of persons in the same family who are paupers.                                                                   |
| 8  | No. of persons of color in the same family not taxed.                                                                |
| 9  | No. of persons of color in the same family who are taxed.                                                            |
| 10 | No. of persons of color in the same family who are legal voters.                                                     |
| 11 | No. of married females in the same family under the age of 45 years.                                                 |
| 12 | No. of unmarried females in the same family between the ages of 16 and 45.                                           |
| 13 | No. of unmarried females in the same family under 16 years of age.                                                   |
| 14 | No. of marriages in the same family during the year preceding.                                                       |
| 15 | Males. Females. No. of births in the same family during the year preceding.                                          |
| 16 | Males. Females. No. of deaths in the same family during the year preceding.                                          |
| 17 | No. of members of the same family born in the state of New-York.                                                     |
| 18 | No. of members of the same family born in any of the New-England States.                                             |
| 19 | No. of members of the same family born in any of the other States of the Union.                                      |
| 20 | No. of members of the same family born in Mexico or South America.                                                   |
| 21 | No. of members of the same family born in Great Britain, or its possessions.                                         |
| 22 | No. of members of the same family born in France.                                                                    |
| 23 | No. of members of the same family born in Germany.                                                                   |
| 24 | No. of members of the same family born in other parts of Europe.                                                     |
| 25 | No. of children in the same family between the ages of 15 and 16 years.                                              |
| 26 | No. of children in the same family attending common schools.                                                         |
| 27 | No. of children in the same family attending private or select unincorporated schools.                               |
| 28 | No. of children in the same family attending academies, or incorporated seminaries of learning, other than colleges. |
| 29 | No. of children in the same family attending college or universities.                                                |
| 30 | No. of yards of full cloth manufactured in the same family during preceding year.                                    |
| 31 | No. of yards of flannel and other woollen cloths, not full, manufactured in the same family during preceding year.   |
| 32 | No. of yards of linen, cotton, or other thin cloth, manufactured in the same family during the preceding year.       |



## Agricultural Statistics.

|    |                  |                                                            |
|----|------------------|------------------------------------------------------------|
| 33 | Acresof<br>Land. | No. of acres of improved land occupied by the same family. |
| 34 | Barley.          | No. of acres of Barley under cultivation.                  |
|    |                  | Quantity of Barley raised therefrom during preceding year. |
| 35 | Peas.            | No. of bushels raised.                                     |
|    |                  | No. of acres of Peas under cultivation.                    |
| 36 | Beans.           | No. of acres of Beans.                                     |
|    |                  | Quantity raised.                                           |
| 37 | Buck-<br>wheat.  | No. of acres of Buckwheat.                                 |
|    |                  | Quantity raised.                                           |
| 38 | Turnips.         | No. of acres of Turnips.                                   |
|    |                  | Quantity raised.                                           |
| 39 | Potatoes         | No. of acres of Potatoes.                                  |
|    |                  | Quantity raised.                                           |
| 40 | Flax.            | No. of acres of Flax.                                      |
|    |                  | Quantity raised (pounds).                                  |
| 41 | Wheat.           | No. of acres of Wheat sown.                                |
|    |                  | No. of acres of Wheat harvested.                           |
|    |                  | Quantity of Wheat raised.                                  |
| 42 | Corn.            | No. of acres of Corn planted.                              |
|    |                  | Quantity harvested.                                        |
| 43 | Rye.             | No. of acres of Rye sown.                                  |
|    |                  | Quantity harvested.                                        |
| 44 | Oats.            | No. of acres of Oats sown.                                 |
|    |                  | Quantity harvested.                                        |
| 45 | Neat Cattle.     | No. of Neat Cattle owned by the family.                    |
|    |                  | Under one year old.                                        |
|    |                  | Over one year old.                                         |
|    |                  | No. of cows milked.                                        |
|    |                  | No. of pounds of butter made during preceding year.        |
|    |                  | No. of pounds of cheese made during preceding year.        |
| 46 | Hor-<br>ses.     | No. of Horses owned by said family.                        |
| 47 | Sheep.           | No. of Sheep owned by said family.                         |
|    |                  | Under one year old.                                        |
|    |                  | Over one year old.                                         |
|    |                  | No. of fleeces.                                            |
|    |                  | No. of pounds of wool.                                     |
| 48 | Hogs.            | No. of Hogs owned by said family.                          |



| No. | Value of raw materials used and manufactured in each. | Dollars.                                              |
|-----|-------------------------------------------------------|-------------------------------------------------------|
| 1   | Grist Mills.                                          | Value of manufactured article in each.                |
| 2   | Saw Mills.                                            | Value of raw materials used and manufactured in each. |
| 3   | Oil Mills.                                            | Value of raw materials used and manufactured in each. |
| 4   | Fulling Mills.                                        | Value of raw materials used and manufactured in each. |
| 5   | Carding Machines.                                     | Value of raw materials used and manufactured in each. |
| 6   | Cotton Factories.                                     | Value of raw materials used and manufactured in each. |
| 7   | Woollen Factories.                                    | Value of raw materials used and manufactured in each. |
| 8   | Iron Works.                                           | Value of raw materials used and manufactured in each. |
| 9   | Trip Hammers.                                         | Value of raw materials used and manufactured in each. |
| 10  | Distilleries.                                         | Value of raw materials used and manufactured in each. |



Statistical return for each district (continued).

| No. | Value of raw materials used and manufactured in each. | Dollars. | Value of manufactured articles in each. | Dollars. |
|-----|-------------------------------------------------------|----------|-----------------------------------------|----------|
| 11  | Asheries.                                             |          |                                         |          |
| 12  | Glass Factories.                                      |          |                                         |          |
| 13  | Rope Factories.                                       |          |                                         |          |
| 14  | Chain Cable Factories.                                |          |                                         |          |
| 15  | Oil Cloth Factories.                                  |          |                                         |          |
| 16  | Dyeing & Printing Factories.                          |          |                                         |          |
| 17  | Clover Mills.                                         |          |                                         |          |
| 18  | Paper Mills.                                          |          |                                         |          |
| 19  | Tanneries.                                            |          |                                         |          |
| 20  | Breweries.                                            |          |                                         |          |
|     | Silk.                                                 |          |                                         |          |



[illegible]



[CODE.]

5



Highways, amount expended thereon. Ho- Colleges, academies, common schools and seminaries of learning, and the costs of all buildings erected for educational purposes, tels, stores, trades and professions. and of the real estate belonging thereto, and of all improvements, except ordinary repairs.

|                                        |  |                                       |  |                                   |  |                          |  |                          |  |                       |  |                   |  |                                    |  |                   |  |                       |  |                   |  |                 |  |                   |  |                                                                                                                                                         |  |                                 |  |                  |  |                                |  |                             |  |                      |  |                      |  |                                    |  |                             |  |                      |  |                   |  |                                 |  |                             |  |                      |  |                           |  |                                         |  |                             |  |                      |  |                                                     |  |                                                                   |  |                             |  |                      |  |                        |  |                                      |  |                             |  |                      |  |                        |  |                                      |  |                             |  |                      |  |                                  |  |                               |  |                                    |  |                                                  |  |                             |  |                      |  |                            |  |
|----------------------------------------|--|---------------------------------------|--|-----------------------------------|--|--------------------------|--|--------------------------|--|-----------------------|--|-------------------|--|------------------------------------|--|-------------------|--|-----------------------|--|-------------------|--|-----------------|--|-------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------|--|------------------|--|--------------------------------|--|-----------------------------|--|----------------------|--|----------------------|--|------------------------------------|--|-----------------------------|--|----------------------|--|-------------------|--|---------------------------------|--|-----------------------------|--|----------------------|--|---------------------------|--|-----------------------------------------|--|-----------------------------|--|----------------------|--|-----------------------------------------------------|--|-------------------------------------------------------------------|--|-----------------------------|--|----------------------|--|------------------------|--|--------------------------------------|--|-----------------------------|--|----------------------|--|------------------------|--|--------------------------------------|--|-----------------------------|--|----------------------|--|----------------------------------|--|-------------------------------|--|------------------------------------|--|--------------------------------------------------|--|-----------------------------|--|----------------------|--|----------------------------|--|
| Number of miles in length of highways. |  | Amount of money expended on highways. |  | Number of days labor on highways. |  | No. of inns and taverns. |  | No. of wholesale stores. |  | No. of retail stores. |  | No. of groceries. |  | No. of farmers and agriculturists. |  | No. of merchants. |  | No. of manufacturers. |  | No. of mechanics. |  | No. of lawyers. |  | No. of clergymen. |  | Total amount of salaries or compensation payable to clergymen of all denominations, for the year, including perquisites and use of real estate by them. |  | No. of physicians and surgeons. |  | No. of Colleges. |  | Cost of Colleges, (buildings.) |  | Cost of other improvements. |  | Cost of real estate. |  | No. of Universities. |  | Cost of Universities, (buildings.) |  | Cost of other improvements. |  | Cost of real estate. |  | No. of Academies. |  | Cost of Academies, (buildings.) |  | Cost of other improvements. |  | Cost of real estate. |  | No. of Female Seminaries. |  | Cost of Female Seminaries, (buildings.) |  | Cost of other improvements. |  | Cost of real estate. |  | No. of other incorporated institutions of learning. |  | Cost of other incorporated institutions of learning, (buildings.) |  | Cost of other improvements. |  | Cost of real estate. |  | No. of Normal Schools. |  | Cost of Normal Schools, (buildings.) |  | Cost of other improvements. |  | Cost of real estate. |  | No. of Common Schools. |  | Cost of Common Schools, (buildings.) |  | Cost of other improvements. |  | Cost of real estate. |  | No. of pupils on teacher's list. |  | Average attendance of pupils. |  | No. of Private and Select Schools. |  | Cost of Private and Select Schools, (buildings.) |  | Cost of other improvements. |  | Cost of real estate. |  | No. of children attending. |  |
|----------------------------------------|--|---------------------------------------|--|-----------------------------------|--|--------------------------|--|--------------------------|--|-----------------------|--|-------------------|--|------------------------------------|--|-------------------|--|-----------------------|--|-------------------|--|-----------------|--|-------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------|--|------------------|--|--------------------------------|--|-----------------------------|--|----------------------|--|----------------------|--|------------------------------------|--|-----------------------------|--|----------------------|--|-------------------|--|---------------------------------|--|-----------------------------|--|----------------------|--|---------------------------|--|-----------------------------------------|--|-----------------------------|--|----------------------|--|-----------------------------------------------------|--|-------------------------------------------------------------------|--|-----------------------------|--|----------------------|--|------------------------|--|--------------------------------------|--|-----------------------------|--|----------------------|--|------------------------|--|--------------------------------------|--|-----------------------------|--|----------------------|--|----------------------------------|--|-------------------------------|--|------------------------------------|--|--------------------------------------------------|--|-----------------------------|--|----------------------|--|----------------------------|--|



## SEC. 187.

1 Every person whose usual place of abode shall be in any family, on  
2 the first day of July in every such tenth year, shall be returned as of  
3 such family; and every person casually absent, shall be returned as  
4 belonging to that place in which he usually resides.

## SEC. 188.

1 The return shall be certified by each marshal taking the enumera-  
2 tion, to be true and accurate to the best of his knowledge and belief  
3 and subscribed and sworn to by him, before some officer authorized to  
4 administer oaths, who shall certify such attestation, without fee.

## SEC. 189.

1 Each marshal shall, on or before the first day of September in every  
2 such tenth year, cause the returns so certified, with a duplicate copy  
3 thereof, to be delivered to the supervisor or town clerk of the town, or  
4 to the alderman or assistant alderman of the ward in which such mar-  
5 shal was appointed. The officer receiving such returns shall, within  
6 ten days thereafter, make and transmit to the county clerk an abstract  
7 thereof, subscribed and certified by him, containing the aggregate result, or  
8 sum total, of each of the particulars required to be stated in the several  
9 columns of the returns to be made by the marshals, as herein before  
10 prescribed. The duplicate copy of such original returns, shall remain  
11 with the officer with whom they were deposited, for the inspection, at  
12 all proper hours, of any person interested, and shall be filed immediate-  
13 ly after the first day of October thereafter, in the office of the town  
14 clerk, or clerk of the common council in the several cities of this state.



## SEC. 190.

1 Each county clerk shall, on receiving such certified abstracts of the  
2 returns, and before the second Tuesday of October in every such tenth  
3 year, make and transmit to the secretary of state, by mail, an abstract  
4 thereof, subscribed and certified by him, containing the aggregate re-  
5 sult or sum total in each town or ward in his county, specifying such  
6 towns and wards, and the particulars required to be stated in the  
7 several columns of the returns made by the marshals, as herein be-  
8 fore prescribed ; and also the aggregate result or sum total of each of  
9 the said particulars.

## SEC. 191.

1 The secretary of state, after receiving such abstracts, shall prepare and  
2 report to the legislature, a general account of the enumeration, specify-  
3 ing the result thereof in the several towns, wards, cities and counties  
4 of the state, with a full recapitulation of the whole.

## SEC. 192.

1 The accounts of marshals and other officers, for services under  
2 this title, shall be audited and allowed, by the supervisors of the  
3 county where such services were performed, except in the county  
4 ty of New-York, where they shall be audited and allowed by the com-  
5 mon council, and shall be assessed collected and paid, as part of the  
6 contingent expenses of such counties.

## SEC. 193.

1 Any person being the head of a family, or residing therein, above  
2 the age of twenty one years, who shall refuse to give the information,



3 or who shall wilfully give false information to any marshal, relative to  
4 any of the particulars, which he is required to state in his returns, shall  
5 forfeit the penalty of fifty dollars to be recovered with costs of suit, by  
6 and in the name of the supervisor of the town, or alderman of the  
7 ward, in which such penalty was incurred; such penalty when collect-  
8 ed, shall be paid over to the treasurer of the county for the use thereof.

## SEC. 193.

1 Persons shall be appointed by the secretary of state, who shall, under  
2 his directions, make an enumeration of the indians residing on the  
3 several reservations in this state, and ascertain and return the num-  
4 ber of acres of land cultivated by such indians, and such other statis-  
5 tics and information relating to them, as the secretary of state shall re-  
6 quire. The persons so appointed, shall be paid such compensation for  
7 their services, not exceeding two dollars per day, as the secretary shall  
8 deem just.

## SEC. 193.

1 The secretary of state shall procure by the commencement of the  
2 first session of the legislature after every enumeration, three hundred  
3 lithographic maps of the state, delineating the boundaries of the  
4 judicial and senate districts, and of the several towns, wards, cities and  
5 counties of this state, and specifying in each town, ward, city and  
6 county, the population thereof and the population of each senate and  
7 judicial district, and also a statement of the population, upon which  
8 the apportionment of Senators and members of assembly is then based.  
9 One of the said maps shall be deposited in the clerk's office of each



10 county, and in the office of the clerk of the common council in each  
11 city. The remainder shall be for the use of the legislature.

[NOTE. It is proper to observe here, as this is the first title, creating charges on the treasury, that there can be no general provisions in any act, authorising the payment of money, at a period beyond two years from the passage of such act. "No moneys shall ever be paid out of the Treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall directly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum." Cons. Art. 7. § 8. Acts therefore, making general provisions for the payment of money, out of the treasury on the warrant of the comptroller, or otherwise, would conflict with this provision. Before any money can be paid, it must be appropriated by a law, passed within two years before such payment; and no money can be paid under any appropriation act, after the expiration of two years from its passage. Therefore any provision authorising payment out of the state treasury for the expenses of the census in 1855, would be repugnant to the constitution. The law may create the charge, and define how it shall be liquidated and the amount ascertained, but cannot say, generally, that when ascertained it shall be paid out of the treasury. A specific sum must be appropriated, out of which the charge is to be paid. It will be necessary for the legislature of 1854, to appropriate a certain sum for the expenses of taking the census

The constitution has no application to county charges. They may be audited and paid under general laws as heretofore.

## TITLE 11.

### **Of the formation of Senate, Assembly, Judicial and Congressional districts, and of the apportionment of Members of Assembly.**

SECTION 194. Of the Senate districts.

195. Of the apportionment of Members of the Assembly and of the Assembly districts.

196. Of the apportionment of justices of the supreme court and of the judicial districts.

197. Of the Congressional districts.

#### SEC. 194.

1 The Senate districts shall be so altered by the legislature, at the first  
2 session after every State enumeration, that each senate district shall con-  
3 tain, as nearly as may be, an equal number of inhabitants, excluding aliens  
4 and persons of color not taxed, and shall remain unaltered until the return



5 of another State enumeration, and shall at all times consist of contigu-  
6 ous territory; and no county shall be divided in the formation of a sen-  
7 ate district, except such county shall be equitably entitled to two or  
8 more senators, and no assembly district shall be divided in the forma-  
9 tion of a senate district.

Cons., Art. 3, § 4, 5.

SEC. 195.

1 The legislature, at its first session after the return of every state enu-  
2 meration, shall re-apportion the members of assembly among the seve-  
3 ral counties of the state; and the boards of supervisors, in such counties  
4 as may be entitled under such re-apportionment to more than one mem-  
5 ber, shall assemble at such time as the legislature making such re-ap-  
6 portionment shall prescribe, and divide their respective counties into  
7 assembly districts, equal to the number of members of assembly, to  
8 which such counties are severally entitled by law, and shall cause to be  
9 filed in the office of the secretary of state, and the clerks of their re-  
10 spective counties, a description of such assembly districts, specifying  
11 the number of each district, and the population thereof, according to  
12 the last preceding state enumeration, as near as can be ascertained.  
13 Each assembly district shall contain, as nearly as may be, an equal  
14 number of inhabitants, excluding aliens and persons of color not taxed,  
15 and shall consist of convenient and contiguous territory; but no town  
16 shall be divided in the formation of assembly districts, and the appor-  
17 tionment and districts so made, shall remain unaltered until ano-  
18 ther State enumeration be taken.

Cons. Art. 3, § 5.



It may be proper to suggest the inquiry, how far the provisions of the constitution, embodied in the above section, will interfere with the division of towns and counties. Such divisions must be so made as not to alter any existing assembly district.

## SEC. 196.

1 The legislature may re-organize the judicial districts, at the first session  
2 after the return of every state enumeration, and at no other time, and  
3 at such session, increase or diminish the number of districts; but such  
4 increase or diminution, shall not be more than one district at any one  
5 time. Each district shall have four justices of the supreme court, but  
6 no diminution of districts shall have the effect to remove a judge from  
7 office.

Cons. Art. 6, § 16.

## SEC. 197.

1 The representatives in congress shall be elected in single districts,  
2 composed of contiguous territory, and containing, as nearly as may be,  
3 an equal number of inhabitants, excluding aliens and persons of color  
4 not taxed; and after every enumeration of the inhabitants of the United  
5 States, and an apportionment of the members of Congress among the  
6 several states, and before the next general election of representatives in  
7 congress, the legislature shall cause the state to be divided, in the man-  
8 ner herein prescribed, into single congressional districts, and if it be ne-  
9 cessary for that purpose, the executive of the state, shall order a special  
10 session of the legislature.

This section is no otherwise important, than to sanction the principle of representation by single districts. Its enactment, as declaring the settled policy of the state, is deemed proper, and cannot fail to secure the respectful consideration of congress, when making provision for the election of representatives.



## TITLE 12.

## The Bill of Rights.

- SECTION 202. Right to keep, and bear arms.
203. Persons averse, from conscientious scruples, excused from bearing arms.
204. Prohibition against quartering soldiers.
205. Religious liberty secured.
206. Neither justice, nor rights to be denied.
207. Unlawful fines prohibited.
208. Excessive bail and cruel punishment prohibited.
209. Elections to be free and voters protected.
210. Right of petition, and to represent grievances, secured.
211. Right to assemble and petition to be inviolate.
212. Liberty of speech, and of the press secured.
213. The truth a justification in prosecutions for libel, and jurors, judges of the law and fact.
214. Liberties of the people to be inviolate.
215. Persons to be prosecuted for crimes only in the manner prescribed.
216. Personal security, property and liberty protected. Illegal prosecutions prohibited.
217. Trial by jury secured.
218. The writ of habeas corpus not to be denied.
219. Rights of persons on trial for crimes.
220. Unlawful searches, and arrests prohibited.

## SEC. 202.

- 1 A well regulated militia being necessary to the security of a free  
2 state, the right of the people to keep and bear arms, shall never be in-  
3 fringed.

Second amend. Cons. U. S.

1 R. L. 47, § 1. § 1. ch. 4. Part 1. Rev. Stat.

## SEC. 203.

- 1 The inhabitants of this state, of any religious denomination, who,  
2 from scruples of conscience, are averse to bearing arms, shall be excused  
3 therefrom, upon such conditions as shall be prescribed by law.

Altered from § 5 of the present bill of rights to conform to Sec. 1, Art. 11 of the  
Constitution.

## SEC. 204.

- 1 No soldier shall, in time of peace, be quartered in any house, with-  
2 out the consent of the owner; nor in time of war, but in the manner  
3 prescribed by law.

3d Amend. Cons. U. S. § 6, Bill of rights.



## SEC. 205.

1 The free exercise and enjoyment of religions profession and worship,  
2 without discrimination or preference, shall forever be allowed in this  
3 state, to all mankind; and no person shall be rendered incompetent to  
4 be a witness, on account of his opinions on matters of religious belief;  
5 but the liberty of conscience hereby secured, shall not be so construed,  
6 as to excuse acts of licentiousness, or justify practices inconsistent with  
7 the peace or safety of the state.

Cons. Art. 1, § 3.

Note to 205. This section contains a provision not in the former Constitution or bill of rights. "No person shall be rendered incompetent to be a witness, on account of his opinions on matters of religious belief." Cons. Art. 1, § 3. An oath, as understood in the law, is founded upon the belief of a Supreme Being, who will punish false swearing, and is regarded as an outward pledge, or promise, to speak the truth, made under an immediate sense of responsibility to that Being, and an invocation of His vengeance upon the witness, if he testifies falsely. Therefore, whenever an individual conceives of, and believes in the existence of such Being, and ascribes to Him the attributes of moral government, he has that religious sense, heretofore deemed necessary, to render him a competent witness.

One who totally disbelieves in the existence of a Supreme Being, or in any punishment by an overruling Providence, in this or another life, could not, upon the former theory of the law, take an oath. He could make no invocation of the vengeance of such Being, nor could his attestation to speak the truth, be regarded as made under that sense of responsibility, which was deemed the essence of an oath.

As the law formerly existed, courts and jurors were bound to suppose, till the contrary appeared, that all persons, sworn as witness, were competent to take an oath, 2d Cowen 432; but one who disbelieved in the existence of a Supreme Being, who would punish perjury in this, or the next world, was incompetent to be a witness, Sec. 87, Title 3. Ch. 7. Part 3, Rev. Stat.

The provision, in question, is supposed to make every person, whatever may be his opinion upon matters of religious belief, competent as a witness. It was adopted into the Constitution, probably, on the ground that some degree of reliance ought to be placed upon every man's relation of facts; If that be its effect the presumption on which courts have heretofore acted, can no longer be indulged.

It has been supposed that more credence should be placed, by jurors, upon the statement of persons, who stand in awe of a Supreme Being, and fear to offend him, than upon those entertaining no such sentiments. If the Constitution is to be regarded as introducing a new rule of law, and repealing the provisions of the Revised Statutes above cited, it is suggested, unless the ideas heretofore entertained are erroneous, that some provision be incorporated into the law, by which courts and jurors can know under what sense of responsibility a witness testifies.



## SEC. 206.

1 Neither justice nor right shall be sold to any person; nor denied or  
2 deferred; writs and process shall be granted freely, and without delay,  
3 to all persons requiring the same, on payment of the fees established  
4 by law.

Bill of Rights, § 15.

## SEC. 207.

1 No person shall be fined or amerced, without lawful cause, and every  
2 fine or amercement shall be proportioned to the offence.

Bill of rights, § 16.

## SEC. 208.

1 Excessive bail shall not be required; nor cruel or unusual punish-  
2 ments inflicted; nor shall witnesses be unreasonably detained.

Cons. Art. 1, § 5. 5th Amend. Con. U. S.

## SEC. 209.

1 All elections shall be free, and no person, by force of arms, malice,  
2 menace, or otherwise, shall disturb or hinder any elector, in the free ex-  
3 ercise of the right of suffrage.

Bill of rights, § 18.

## SEC. 210.

1 It is the right of all people to petition the governor, or either house  
2 of the legislature, and to represent in good faith, to the govern-  
3 ment, or any proper department or officer thereof, any matter of public  
4 grievance, or violation of law, and all commitments and prosecutions  
5 therefor are illegal.



[Note to sec. 210. In this section the right of petition is secured to all persons. In the former bill of rights it was secured to citizens only.]

The right of making what is generally termed "privileged communications," as declared in this section, is believed to be strictly in accordance with existing law.

Such communications, to be in good faith, must be made with an honest intent to correct an abuse, or punish a crime.

The right is, in its nature, political, and therefore proper to be secured in the bill of rights.]

#### SEC. 211.

- 1 No law can be passed, abridging the right of the people peaceably to
- 2 assemble and petition the government, or any department thereof.

Cons. Art. 1, § 10. Bill of rights, § 19.

#### SEC. 212.

- 1 Every citizen may freely speak, write, and publish his sentiments on
- 2 all subjects, being responsible for the abuse of that right; and no law
- 3 can be passed to restrain or abridge the liberty of speech, or of the
- 4 press.

Cons. Art. 1, § 8.

#### SEC. 213.

- 1 In all criminal prosecutions, or indictment for libels, the truth may be
- 2 given in evidence to the jury; and if it shall appear to the jury, that the
- 3 matter charged as libelous is true, and was published with good motives
- 4 and for justifiable ends, the party shall be acquitted; and the jury have
- 5 the right to determine the law and the fact.

Cons. Art. 1, § 8.

#### SEC. 214.

- 1 No member of this state shall be disfranchised, or deprived of any of
- 2 the rights or privileges secured to any citizen thereof, unless by the law
- 3 of the land, or the judgment of his peers.

Cons. Art. 1, § 1.



[Note to sec. 214. This section is from article 1, § 1, of the present, and Art. 7, § 1, of the former constitution. It is taken from sec. 2 of the bill of rights of 1787, 1 R. S. 47, which was as follows:

"No citizen of this state shall be taken, or imprisoned, or be disseised of his or her freehold, or liberties, or free customs; or outlawed, or exiled, or condemned, or otherwise destroyed; but by lawful judgment of his or her peers, or by due process of law."

This provision is contained in Magna Charta, 9 Hen. 3 ch. 29; which declares that "No freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed, nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man, either justice or right."

Under this constitutional provision, most important rights are secured.

1. No person can be taken or imprisoned, but according to the prescribed and established rules of law.

2. No one can be disfranchised, or deprived of any of the rights secured to him as a citizen, but in the same way.

3. The legislature can pass no law, which, by its direct operation, and without the intervention of courts, or by proceedings "in due course and process of law," can "disfranchise or deprive any person of his lawful right or privilege."

4. A member of the state may be disfranchised, or deprived of rights secured or granted to him, by conviction on an impeachment, or by removal from office, as provided in the constitution, or by conviction of crime or other lawful mode of conviction by the verdict of a jury, which is the judgment of his peers.

5. The expression, "judgment of his peers," has not the same practical signification here as in England, where the general division of persons are the nobles and commons. The nobles are peers of each other, notwithstanding they are of different degrees of nobility; so the commons, though distinguished as knights, esquires, gentlemen, citizens, yeomen and burgesses, are peers, one to another. 2d Inst. p. 29. There being no political distinction among "the members of the state," all are peers, and jurors are to be taken from the whole body or class of citizens; but by the common law of England, every jury impannelled, in an inquest upon a person, for convicting or clearing him of any offence, for which he might be called in question, must be composed of his peers or equals (Cowell's Law Dict. Title Peers).

6. This section contains an additional security of the right of trial by jury, for all crimes, the punishment of which is disfranchisement, or the deprivation of rights and privileges, except in those cases specially named in the constitution, such as impeachment or removal from office; but in such cases, the proceedings must be according to the law of the land, or by due course and process of law.

The objects of this, and other like provisions, in the constitution and bill of rights, are, to afford to the people,

The right of personal security;

The right of personal liberty;

The right of private property.

The preservation of these, inviolate, may justly be said to include the preservation of our civil immunities, in their largest and most comprehensive sense.

These provisions serve mainly as outworks, or barriers, to protect the chief and principal rights of the citizen, and they are infringed whenever any right, in the smallest degree, or in the person of the humblest citizen, is violated. The protection of these rights is the direct aim of the constitution, and the chief object of the political compact.



## SEC. 215.

1 No person shall be held to answer for a capital, or otherwise infamous  
2 crime, unless on presentment or indictment of a grand jury; except in  
3 cases

4 Of impeachment, and

5 Of the militia, when in actual service, and

6 Of the land and naval forces, in time of war, or which this state  
7 may keep, with consent of congress, in time of peace.

8 And in cases of petit larceny, under the regulation of the legislature.

9 And in any trial, in any court whatever, the party accused shall be  
10 allowed to appear and defend in person, or with counsel, as in civil  
11 actions.

Const. Art. 1, § 6.

[Note to sec. 215. The provisions of sec. 214 brings every citizen, and his personal rights, within the protection of the law; but to make these rights more secure, against the enactment of unauthorised laws, or oppressive or arbitrary modes of procedure, the law-making power is, necessarily, limited and restrained, and this section secures to every person the right of not being called to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury; except in the enumerated cases, in which the proceedings must have the authority, and be observed according to the forms of law. (See note to sec. 216.)

The former constitution secured, to the accused, the right to appear, by counsel, only in a trial upon impeachment or indictment. Former Const. Art. 7, § 7. 15 Wend. R. 451. The right to appear by counsel and in person, is now secured in every court whatever. Const. Art. 1, § 6.]

## SEC. 216.

1 No person shall be twice tried for the same offence; nor be compell-  
2 ed, in any criminal case, to be a witness against himself; nor be arrest-  
3 ed without lawful cause; nor be deprived of life, liberty or property,  
4 otherwise than by due course and process of law; nor shall private  
5 property be taken for public use, without just compensation.

Const. Art. 1, § 6.



[Note to sec. 216. The language of the Constitution, from which this section is framed, is as follows : " No person shall be subject to be twice put in jeopardy for the same offence ; nor shall he be compelled, in any criminal case, to be a witness against himself ; nor be deprived of life, liberty or property, without due process of law ; nor shall private property be taken for public use, without just compensation."

This provision is exceedingly comprehensive and ample, and to be fully understood, demands accurate, and somewhat detailed illustration.

1. No person shall be subject to be twice put in jeopardy for the same offence.

The corresponding provision, in the former Constitution, was in these words : " No person shall be subject, for the same offence, to be twice put in jeopardy of life or limb." Art. 7, § 7, Const. of 1822. The same provision is contained in the 5th amendment of the constitution of the U. S. The bill of rights, passed in 1787, and the first Constitution of the State, had no similar provision.

The bill of rights of 1787, declared that " no person shall lose his life or limb, unless he shall be duly brought to answer, and be forejudged of the same by due course of law." The expression, " jeopardy of limb," or " loss of limb," designates the nature of an offence. No law ever existed in this state, inflicting upon any convicted person the " loss of limb," as punishment. These terms, therefore, must have some other than a literal meaning. They have a technical one. Before the statute, Wm. 1, c. 9, all felonies were punished by loss of limb ; by that statute it was ordained, that " the judgment for all manner of felonies should be, that the person attainted be hanged by the neck," (3 Inst. 53). From that time, though there was no punishment of loss of limb, the phrase continued to be used, as expressing the crime of treason, or felony, above the degree of petit larceny ; and when an act of parliament declared that if a man commit such an act, he should have judgment of life and member, it made the offence a felony, but did not designate the punishment. Hale, P. C., c. 70, 73 ; c. 65, s. 1. The meaning of the expression, in the constitution of 1822, and in the 5th amendment of the constitution of the United States, is that no man shall be twice put in jeopardy for the same felony : but the provision, in the present Constitution, embraces all offences, and no man " can be twice put in jeopardy for the same offence." *People vs. Goodwin*, 16 John. R. 187.

The phrase, " twice put in jeopardy," " is also, technical, and means that no man can be brought to trial, more than once, for the same offence ; and when he is fairly tried, and found guilty, or not guilty, upon an indictment, or other lawful mode of prosecution, before any court having competent jurisdiction, he may plead such acquittal or conviction in bar to any subsequent accusation for the same crime. This is an inflexible rule of the common law, embodied in the Constitution. To render the former acquittal a bar to any subsequent prosecution, it must be a legal acquittal by judgment, upon a trial, substantially, for the same offence, and must be pleaded.

If the jury do not agree, or are discharged for good cause, or a verdict against the accused be set aside for any error, there has been no trial, and another jury may be sworn. 18th John. R. 187.

If the indictment, upon which the party was tried, was so far erroneous, for want of substance, in setting out a crime, that no judgment could be given thereon, against the defendant, the acquittal was held no bar to a subsequent indictment, although it was by the verdict of a jury upon the evidence. The reason assigned was, that upon such defective indictment, the defendant never was in jeopardy ; for, in such a case the court was bound to arrest the judgment. 1 John. R. 66. The



statute has varied this rule, and whenever the defendant is acquitted upon the merits, by the verdict of a jury, such acquittal may be pleaded in bar to any subsequent indictment for the same offence, notwithstanding any defect therein; but when he is acquitted on the ground of variance between the indictment and proof, or by reason of any defect in the form or substance of the indictment, he may be tried again for the same offence. §§ 24, 25, Title 7, ch. 1, part 4 Rev. Stat.

This statute must be construed to mean, that if the proof shows an offence, but not the same charged in the indictment, by reason of which the party is acquitted, he may be tried for the offence proved, but cannot be again tried for that set forth in the indictment. When a party pleads not guilty to an indictment, setting forth an offence, in sufficient and proper language, and upon the trial is acquitted, he cannot be again tried for the same offence.

Where the defendant admits all the facts, alleged in the indictment, and the judgment of the court is in his favor, it is necessarily conclusive, as neither by the common law nor any statute, can a writ of error, in such a case, be brought.

After a defendant has submitted himself to the judgment of a competent court, admitting all the facts alleged against him, if he is adjudged guilty, the conviction is as conclusive, in law, as upon the verdict of a jury; and whether the judgment be for or against the accused, he has been put in jeopardy in reference to the facts alleged against him, and as much tried as if found, guilty or not guilty, by the verdict of a jury. If a writ of error, in such a case, could be allowed to reverse the judgment, on the ground of an erroneous acquittal, a defendant might be compelled to stand twice in the same jeopardy.

No error of a jury, nor any wilful disregard, on their part, of the evidence; nor any verdict in favor of the accused, against the weight of evidence, can be resorted to, as an excuse, for twice trying any one for the same offence; and although the reason why the verdict should be final may not, strictly, apply to the decision of a court, when there is no dispute about the facts, another reason comes in of greater weight. The criminal code should be clear and explicit in defining offences, for civil institutions cannot regard any act as criminal unless forbidden. Crime consists in the knowledge, every man is supposed to have, when he does an act, that it violates the law; and if the law is so obscure that judges fall into an error, in supposing certain admitted acts are not denounced as crimes, no person should be punished for not understanding that they are. The accused is entitled to the benefit of every reasonable doubt, arising out of the proof against him; and if there is a doubt, as to the law, he should be entitled to its benefit.

2. No person can be compelled in any criminal case to be a witness against himself.

The principle embraced in this provision, protects every person from being made to testify to any matter that would criminate, or tend to criminate himself, or from disclosing any facts that might lead to the discovery of evidence which would convict him of a crime.

Confessions extorted through fear, or by threats or from hope of favor, are not allowed as evidence against the party making them.

3. No person can be arrested without probable cause.

Every arrest must be with good and sufficient warrant in the law, no process can issue upon suggestion or belief, or in any other way than upon evidence of facts, which warrant the inference that an offence has been committed.

4. No person can be deprived of life liberty, or property without due process of law.

This provision like that in Sec. 214, operates as a restraint upon the exercise of all arbitrary power, and protects the life liberty and property of every one, from



the effect of all laws, that do not operate through the prescribed forms of legal proceedings. To deprive a person of life, or liberty, or property, he must be proceeded against as the constitution prescribes. In the case of taking life, there must first be an indictment by a grand jury, and then a trial and conviction by the verdict of a petit-jury, in a court having competent jurisdiction. The same course is to be observed before the liberty or property of any one can be reached, for the commission of an infamous offence, and it is only when these forms of procedure have been gone through with, and a party is duly convicted, that his life liberty or property can be taken away.

There are many offences, which the law considers such blemishes on the moral character, as to render the party infamous who commits them. For a long time, the infamous character of a crime was supposed to result, rather from the mode of punishment, than from the nature of the offence, 2 Dodson, Rep. 187. The law in this respect, has gradually changed and it now appears to be finally settled in the English courts, that the infamy arises, not from the punishment, nor from the judgment, but from the nature of the crime. The authorities have failed however in furnishing any accurate enumeration of the crimes, comprehended within the definition. All offences founded in fraud, and coming within the general notion of the *crimen falsi* of the Roman law, Leach 496, as perjury, swindling, cheating. Fort. 209; baretry, 2 Salk. 690, bribing witnesses, Fort, 208; conspiracy, Peake 35, have been classed among infamous crimes.

The infamy of a crime is no part of the sentence, but the consequence of the conviction, which operates to deprive individuals of some of their rights and privileges. Persons convicted of infamous offences cannot vote, nor can they be witnesses. The courts have generally reserved to themselves, the right of determining upon the character of a conviction as the cases arose; yet in our system of laws there is a necessity for an accurate and plenary definition; and it is now provided that, "whenever the term infamous crime" is used in any statute, it shall be construed as including every offence punishable by death, or by imprisonment in a State Prison, and no other, Sec. 31, Title 7, Chap. 1. Part 4, Rev. Stat.

Adopting this definition no one can be tried for an offence punishable in a State-prison, unless on presentment or indictment of a grand jury; when the constitution was adopted, the character of crimes being defined by statute, the inference is, that its provisions refer to and adopt that definition.

There is, and always has been, within this State, a class of petit offences, triable without indictment and to which the right of trial by jury does not extend. These cases will be noticed in the note to Sec. 215. Upon conviction for these petty offences, fines and imprisonment may be imposed; but as before stated, only upon conviction had according to the course prescribed by the law.

5. Private property shall not be taken for public use without just compensation.

The former constitution contained this provision, but it was held, as is most obviously the law, that the private property of one man could not be taken for the use of another, in any manner whatever, when the public had no interest in such use. 4 Hill 140, and that our Statute authorising the opening of private roads, for individual benefit, was repugnant to the constitution. In consequence of this decision a clause was inserted in the constitution, declaring that private roads may be opened in the manner to be prescribed by law, after the necessity of the road, and the amount of all damages are determined by a jury of freeholders, and such damages, and all expenses paid by the person to be benefitted. Const. Art. 1, § 7.

The power to take private property, for public use, on just compensation, exists in every government. It has been deemed sufficient, to authorise the exercise of



this power, that the public may be benefitted, by the appropriation of the property, and not that the people should take the title to themselves: and that corporations might acquire title, by the exercise of this power, when a benefit was secured to the public by the use of the property in the hands of the corporation. There is nothing in the constitution repugnant to this construction. On the contrary it seems recognised by requiring the amount of compensation to be ascertained, in a particular mode, when it is not to be made by the State. Const. Art. 1. § 7.

This power, also, must be exercised, in cases prescribed, and in the manner authorised and directed by law.

Every citizen is, then, secure in his person, liberty and property, against the action of any power but such as is exercised through, and according to the prescribed forms, and with the warrant and authority of law.

The security thus extended to individuals, necessarily operates as a restraint upon power.

By the 5th amendment of the constitution of the United States, the people are, to the same extent, protected against the action of congress, or the federal government, as they are against state authority, by the state constitution; and no law can be passed, which, operating directly, can restrain any person of his natural liberty, or deprive him or his property. 4 Hill, 144, 147.

#### SEC. 215.

- 1 The trial by jury, in all cases in which it has heretofore been used,
- 2 shall remain inviolate forever.

Const. Art. 1, § 2.

Note to sec. 215. The origin of trial by jury, cannot, with certainty, be ascertained. 3 Black. Comm. 349. Spence on the jurisdiction of the court of chancery-110. The right is justly regarded as the safeguard of individual liberty, and is secured by the constitutions of the United States and of this state. 7 Amend. Const. U. S.

A power in the legislature, absolutely to define the cases in which the trial by jury is secured, seems incompatible with the constitutional provision; for, if any one case was omitted, the right would not, in that particular case, be taken away.

The cases in which the right exists, have been accurately stated in the decisions. They are all cases of issues of fact, in courts of record, proceeding according to the course of the common law, and all cases of criminal trials upon indictment. *Livingston, vs. The Mayor of New-York*, 8 Wend. 102. *Duffy vs. The People*, 6 Hill, 77.

The right of trial by jury, does not extend to impeachments; Const. Art. 3, § 1. Nor to cases of petit larceny; nor to summary proceedings against beggars, vagrants, and disorderly persons; nor to proceedings to compel persons to keep the peace; nor to those petty offences, punishable summarily by single magistrates; nor to that class of cases in the nature of police regulations, in which the proceedings are to prevent offences and practices hostile to the peace and good order of society. 1 Hill, 355. 10 Wend. 456, 457. 2 Cowen, 815. 3 Paige, 45.



## SEC. 216.

- 1 The privilege of the writ of habeas corpus shall not be suspended ;
- 2 unless when, in cases of rebellion or invasion, the public safety may
- 3 require its suspension.

Const. Art. 1, § 4.

Note to sec. 216. The right of personal liberty, against unlawful imprisonment or duress, is secured by the constitution of this state and the United States. If the unlawful imprisonment is, by any exercise of power, claimed to be under the authority of the United States, application, under the act of congress, may be made to any justice of the supreme court, or district judge of the United States, for the writ of habeas corpus. Act of Congress, March 2, 1833. In all cases, not involving the authority and jurisdiction of the United States, our own courts and judges, in the manner provided by statute, grant this writ, by which the party, unlawfully imprisoned, is brought before the proper court, or officer, and the cause of his detention summarily inquired into; and if found to be unlawful, he must be discharged. Upon proper application, the writ cannot be denied, and heavy penalties are imposed upon the members of any court, or officer, for refusing to allow it, upon sufficient cause. A corrupt refusal to allow this writ, would subject the judges of any court, or officer, having jurisdiction to issue it, to impeachment.

Persons lawfully imprisoned, for want of bail, are entitled to this writ, whenever they are able to find sufficient sureties.

## SEC. 217.

- 1 In all criminal prosecutions the accused has a right to a speedy, and
- 2 public trial by an impartial jury, and is entitled to be informed of the
- 3 nature and cause of the accusation, to be confronted with the witnesses
- 4 against him, and to have compulsory process for obtaining witnesses in
- 5 his favor.

6 Amend. Cons. U. S.

Note to Sec. 217. This section is taken from the sixth amendment of the constitution of the United States. Restrictions of this and similar character, have been held to operate, upon the federal government and its courts, and not to apply to the states or the courts thereof. *Livingston vs. The Mayor of N. Y.* 8 Wend. 85; *Colt vs. Eves* 12 Con. Rep. 243; *Baron vs. Mayor of Baltimore*, 7 Peters 243; *Murphy vs. The People*, 2 Cowen. 815. A contrary opinion, entitled to great weight, has been expressed. The constitution of the United States is the supreme law of the land, and the judges in every state are bound thereby, and it has been supposed that this provision "extends to all judicial tribunals in the United States, whether constituted by Congress, or the states individually," 18 John 201. However this may be, it is the right of the accused, upon the traverse of an indictment to be confronted with the witness against him, and have them examined in open court, so



that the jury, from their appearance, and mode of testifying, may judge of the weight to be given to their evidence. To take away this right in any criminal case, would render the trial by jury, less valuable than is now considered. To protect the innocent against false accusations, it is important that the jury should have every opportunity to judge of the force and effect of the testimony; and the manner of a witness on the stand, and his mode of testifying are as much evidence, as the facts to which he testifies: "for the excellency of the trial by jury is in that they are the triers of the credit of the witnesses, as well as the truth of the fact; it is one thing whether witnesses are admissible to be heard, another thing, whether they are to be believed when heard," 1 Hales P. C. 635. It is the right of the accused to have the credibility of witnesses passed upon by the jury, and that they be sworn and examined, for that purpose, in open court. It is part of the issue and matter of substance which the jury are to try, and if it can be withdrawn from their consideration, by allowing depositions, taken on commission or otherwise, to be read on trial against the accused, the value of the trial by jury would be seriously impaired.

#### SEC. 218.

1 The right of the people to be secure in their persons, houses, papers  
2 and effects, against unlawful searches and seizures, shall not be violated;  
3 and no warrant shall issue without probable and sufficient cause, shown  
4 on oath or affirmation; and all warrants shall particularly describe the  
5 place to be searched, and the person or thing to be seized.

4th Amend. Cons. U. S. Bill of Rights § 11.

Note to Sec. 218, This provision embodies a rule of the common law, which applies to all cases of summary or special proceedings, of a civil as well as criminal character; warrants or attachments in civil proceedings, can only issue upon proof sufficient in law. Mere belief or suspicion, unless warranted by facts will not authorise the issue of such process.

"The first constitution of this state, contained no formal bill of rights; but the legislature, on the 6th of January, 1787, passed an act, "*concerning the rights of the citizens of this state*," which has been re-published, without re-enactment or alteration, in all the subsequent revisions of the laws, though some parts of it were affected, soon after its passage, by various provisions in the constitution of the United States. Since the last revision of the laws, other parts of this act have been substantially incorporated in the amended constitution of this state, and a higher sanction has thereby been given to the principles contained in them."

"The opinion has frequently been advanced, that a declaration of rights, by the legislature, or even by a convention, is, in this country, unnecessary and improper, inasmuch as the people are the acknowledged depositaries of all rights, not expressly granted by themselves; and because the very enumeration of certain rights, seems to warrant an inference unfavorable to the possession of rights not specified: to imply that the rights specified are conferred by the authority making the declaration; and sometimes, to afford a colorable pretext or the assumption of powers, not intended to be granted. These views were adopted by several of the members, who took part in the debates on this subject, in the convention which formed the present constitution of this state, (see Carter and Stone's report of the debates of the convention, p. 163 to 173). But they did not prevent the convention from in



corporating in the constitution, several provisions in the nature of a bill of rights, and analagous to the act of 1787, or to the amendments of the constitution of the United States. It is obvious that the objections above adverted to, are much stronger, when applied to the legislature, than when applied to a convention, invested with extraordinary powers; but, as the statute book contains a bill of rights, the revisors did not feel themselves at liberty to omit it. Nor do they know that any injury can result from the solemn recognition, by the legislature, of those fundamental principles of liberty and justice, which constitute the basis of our government and laws." *Extract from the preliminary report of the Revisors, accompanying chap. IV. of the Revised Statutes.*

The legislature, with all the objections to a declaration of rights, clearly brought to their notice, enacted, substantially, the same provisions we have reported.

It cannot, with any plausibility, be pretended, that the enumeration of particular rights, by implication, denies the existence of other rights, or that particular restraints, upon the exercise of powers, recognise the existence of powers not denied. The liberty of the people is not derived from the constitution, but is a natural, inherent, and inalienable right, recognised in it as pre-existing, and to secure its blessings, as the preamble declares, the constitution was established. The provisions, in the nature of a bill of rights, were inserted, not to create, but to protect the rights they enumerate. To violate them, would be repugnant to the nature of the social alliance, and inconsistent with reason, justice and moral rectitude. They are protected by the principles of a free government, and no court would be justified in holding that a power to invade them, lurked under any general grant of authority. Courts, in considering the powers of a republican government, or the validity of its action upon individuals, must keep in view, that all rightful authority is derived from the people, and no presumption of any grant of powers, inconsistent with natural justice and right, can be founded on any pretence whatever.

Section 1, of the present bill of rights, is inserted in Title 2, as more appropriately belonging to the subject therein embraced.

Section 2, is omitted. Its provisions against taxation, are not consistent with the constitution. Under the former constitution, the legislature possessed the unlimited power of creating debt, and of taxation, which is recognised in the section omitted. These powers are essentially modified by the 7th article of the constitution. Provisions rendered necessary thereby, appropriately belong to other Titles.

Section 4 of the present bill of rights is also omitted. It was enacted, originally, in 1787, before the adoption of the constitution of the United States, except the latter clause, which was inserted by the revisors in 1827, probably to avoid any conflict with the Constitution of the United States.

The section is in the following words:

§ 4. No citizen of this State, can be constrained to arm himself, or to go out of this State, or to find soldiers or men of arms, either horsemen or footmen, without the grant and assent of the people of this State, by their representatives in senate and assembly; *except in the cases especially provided for in the constitution of the United States.*

That part of the section, in italics, was added by the revisors. The other portions were enacted as before stated.

It is not probable this section would have been framed, as it now stands, in the bill of rights, after the adoption of the United States constitution; and it may be questionable whether the exception does not, by implication, recognise a power in the federal government, to compel a citizen to "find soldiers or men of arms, either horsemen or footmen."

Congress has power to provide for organizing, arming and disciplining the militia, and for governing such parts of them as may be employed in the service of the



United States; reserving to the states respectively, the appointment of the officers and the authority of training the militia, according to the discipline prescribed by Congress. Sub. 15, Sec. 8, Art. 1, Cons. U. S. Congress has also power to provide for calling forth the militia, to execute the laws of the Union, suppress insurrection and repel invasion. Sut. 14 same sec.

In times of insurrection, or invasion, it would be proper that the militia of one state should be marched into another, to resist a common enemy, or to guard the republic against the violence of domestic faction, or sedition. Story's Com. on the Const. § 1196. By act of congress, passed in 1795, the President is authorised, in case of invasion, or of danger thereof, to call into service, such number of the militia as he shall deem necessary, to repel such invasion. Under this act, the citizens of a state may be "constrained to go out of the state." Its constitutionality has never been doubted, and is recognised in our courts, and in those of the United States, and in the section as it now stands in the bill of rights. *Vanderheyden vs. Young*, 11 John. Rep. 157. *Martin vs. Mott*, 12 Wheat. R. 19. *Houston vs. Moore*, 5 Wheat. R. 1. The power of the United States to govern the militia, when in actual service, under the United States, is necessarily exclusive. 5 Wheat. R. 1. But whether the militia, when in actual service, are to be commanded by any other, than officers of the same militia, except the President, is unsettled by any authority competent to decide. 8 Mass. Rep. 549. 1 Kent's Com, Sec. 12.

The power vested in congress, to provide for arming the militia, has not yet been acted upon to its probable extent. The states possess and exercise the same power "The militia of this state shall, at all times hereafter, be armed and disciplined and in readiness for service," is the provision of the constitution, Art. 11, § 1. And persons subject to military duty may be required to arm and equip themselves, at their own expense. It is, however, questionable, whether any authority exists in the federal or state governments, to compel a citizen of this state, "to find soldiers or men of arms, either horsemen or footmen," although the section, as it now stands, seems to recognise this power in both.

Upon the best view we can take of this provision, we see no good reason to retain it in the statute book.

Many of the provisions in the bill of rights, are taken from the charter of Henry III., called the "great charter," and sometimes "the great charter of liberties," and other charters of the crown; They are deemed essential to be preserved and kept perpetually in the minds of men, as containing those fundamental maxims which lay at the foundation of civil and political rights. No people can long be free, who neglect to incorporate into their laws, and make effectual, these necessary restraints upon the exercise of power. They are essentially rules and maxims of our common law, and by them our liberties are mainly secured. It affords no reason for leaving them out of the statute book, that they have performed their office, by firmly establishing the rights they were intended to protect: they should remain, if for no other reason, than to avoid any inference that might arise from their omission.



## CHAPTER 2.

The classification of the Public Officers of the State, other than Militia and Town Officers, and Officers of the City and County of New-York and of Municipal Corporations; their election and of filling vacancies.

### **TITLE 13. Classification of public officers.**

**14. Of the election of Governor, his qualification and term of office.**

**15. Of the election of Lieutenant Governor, his qualification and term of office.**

**16. Of the election of Secretary of State, Comptroller, Treasurer, Attorney-General, State-Engineer and Surveyor, Clerk of the Court of Appeals, Canal Commissioners and Inspectors of State Prisons and of vacancies.**

**17. Of the election of Judges of the Court of Appeals and Justices of the Supreme Court, their terms of office, and of filling vacancies therein.**

**18. Of the election of Senators and Members of Assembly; disqualification of Members; and vacating their seats.**

**19. Of the election of officers in counties; duration of terms of office; and of supplying vacancies.**

**20. General provisions applicable to this Chapter, and the officers therein named.**

### **TITLE 13.**

#### **Classification of public officers in this chapter.**

**SECTION 221. Designation of Judicial officers.**

**222. General designation of officers.**

#### **SEC. 221.**

1 Officers authorised to sit as judges in courts of civil and criminal  
2 jurisdiction, while acting as, or exercising the functions of a judge or  
3 justice of any such court, or discharging the powers and duties of a  
4 judge or justice thereof, and no others, are to be deemed judicial offi-  
5 cers, and subject to, and within the provisions of law relating to such  
6 officers.

**NOTE.** The term "judicial officers" is used in the Constitution, to describe judges of courts, and those officers, who act as such, while so acting. Const. Art. 6, Sec. 18, 20.



The former Constitution did not embrace within the term "judicial officers," all who were authorised to perform the duties of judges of courts, 26 Wend. 599; 23 Wend. 414. The present Constitution will not admit of such construction, and the former definition of judicial officers, in the Revised Statutes and in the decisions, 25 Wend. 13, is no longer applicable.

Mayors and Aldermen of cities, authorised to sit as judges in courts of civil and criminal jurisdiction, were held not to be designated as judicial officers, by the former Constitution, 25 Wend. 9; 4 Hill, 384. They are clearly such, within the provision of Sec. 20, Art. 6 Const, when acting as judges and are intended to be brought within that definition in this section.

Officers have been termed "judicial" because they were required to exercise judgment in the discharge of their duties, and in this sense only, were a certain class of officers, other than judges of courts, so designated, 25 Wend. 13. In strictness the designation is improper. Their duties to a certain extent, are in the nature of judicial acts; but it does not follow therefrom that they are judicial officers. The distinction between this class of officers and judges of courts, is taken in numerous cases, 11 Wend. 90, 2 John. 70, 71, 8th Cowen 184, 11 John. 114. These officers are not within the same rule of protection, in respect to their acts, as are judges of courts. If they act maliciously, or without authority, or wilfully misbehave themselves, they are liable to whoever is injured thereby, 12 John. 356; 8 Cowen 184; 2 Cain. 312; 9 John. 395; 5 John. 282. But for whatever a judge may do as a member of a court, he cannot be called in question, 8 Cowen 185; 5 John. 282; 9 John. 309. He may be impeached, and on conviction removed from office. It would be a misapplication of any general definition, to embrace within it, classes of officers, to whom such different rules of law are applicable.

#### SEC. 222.

1 The officers created by the Constitution and genral laws of the  
2 State, are designated as follows:

3 1. Officers whose functions are exercised throughout the State, and  
4 appertain to the general administration thereof, are general State  
5 officers.

6 2. Those whose functions appertain to the general administration of  
7 the State, but are confined in their exercise to some territorial division  
8 or locality in the State, are local State officers.

9 3. Those whose functions appertain to and are to be exercised with-  
10 in counties, and are chosen by the electors or appointed by the au-  
11 thorities thereof, are county officers.

NOTE. The Constitution, § 2, Art. 10, declares that all county officers, whose election or appointment is not therein provided for, shall be elected by the electors of the respective counties, or appointed by the board of supervisors or other county authorities, as the legislature shall direct. Counties are bodies politic, and the term "county officers" by a technical and strict construction, may be made to em-



brace only those whose powers and duties relate to counties in their corporate character; and there is difficulty in giving it a more extended construction. Every officer whose duties are to be performed within a county, is not made thereby a county officer. Collectors of tolls on canals, officers in the State prisons, commissioners for loaning the United States deposit fund, although confined in the discharge of their duties within county limits, are not county officers. They exercise no functions affecting the county. Supervisors act for a county, and their powers extend to a greater variety of matters of interest to its inhabitants, than almost any other local officer; yet they are elected in the several towns.

The provision in the Constitution was intended to break up the central appointing power, and make as many officers as possible, elective by counties or districts, or appointed by local authorities. The spirit of the Constitution will be best observed by making all local officers elective in counties, or appointed by local authorities, unless they are immediately responsible to State authority or their powers are of such a nature that it may become necessary or proper, to verify their official character by the secretary of state.

#### TITLE 14.

##### Of the election of Governor, his qualification and term of Office.

SECTION 223. When Governor elected and term of office.

224. Proceedings in case of equality of votes.

225. Who eligible.

##### SEC. 223.

- 1 A governor shall be chosen at the annual general election, in every
- 2 second year, from the year one thousand eight hundred and forty eight.
- 3 His term of office shall be two years.

Cons. Art. 4. Sec. 1, 3.

##### SEC. 224.

- 1 The person having the highest number of votes for governor shall be
- 2 elected; but in case two or more persons shall have an equal, and the
- 3 highest number of votes, for governor, the two houses of the legislature
- 4 at its next annual session, shall forthwith meet in the assembly cham-
- 5 ber and by joint ballot, choose one of the persons so having an equal,
- 6 and the highest number of votes for governor.

Cons. Art. 4. Sec. 1, 3.



## SEC. 225.

1 No person except a citizen of the United States who has attained the  
2 age of thirty years, and been for five years, next preceding his election  
3 a resident within this state, shall be eligible to the office of governor.

Cons. Art. 4. Sec. 1.

## TITLE 15.

**Of the election of Lieutenant Governor his term, qualifications and of filling a  
vacancy.**

SECTION 226. Of the election of Lieutenant Governor.

227. Proceedings in case of equality of votes.

228. Qualifications of Lieutenant Governor.

229. Of filling vacancies in the office of Lieutenant Governor.

230. Proceedings in case of equality of votes.

231. Person elected to fill vacancy, how long to hold.

## SEC. 226.

1 At every annual general election, at which a governor is chosen, a  
2 lieutenant governor shall be elected, whose term of office shall be two  
3 years.

Cons. Art. 4. Sec. 4.

## SEC. 227.

1 The person having the highest number of votes for lieutenant Gover-  
2 nor shall be elected; but if two or more persons shall have an equal  
3 and the highest number of such votes, the two houses of the legislature  
4 at its next annual session, shall forthwith meet in the assembly cham-  
5 ber, and by joint ballot, choose one of the persons so having an equal,  
6 and the highest number of votes for lieutenant governor.

Cons. Art. 4. Sec. 1, 3.

## SEC. 228.

1 No person except a citizen of the United States, who has attained the  
2 age of thirty years, and been five years next preceding his election a



3 resident within this state, shall be eligible to the office of lieutenant  
4 governor.

Cons. Art. 4. Sec. 1, 7.

SEC. 229.

1 If the office of lieutenant governor shall become vacant, before the  
2 fifteenth day of October next after an annual general election, at which  
3 a lieutenant governor shall have been chosen, a person shall be elected  
4 at the next annual general election thereafter to supply such vacancy.

Laws 1847. Ch. 303.

SEC. 230.

1 The person having the highest number of votes at such election for  
2 lieutenant governor shall be elected; but if two or more persons, shall  
3 have an equal, and the highest number of votes for lieutenant governor,  
4 the legislature at its next annual session, as directed in Sec. 227, shall  
5 choose one of the persons so having an equal, and the highest number  
6 of votes, for lieutenant governor.

Laws 1847. Ch. 303.

SEC. 231.

1 When a person shall be elected to supply a vacancy in the office of  
2 lieutenant governor, as provided in section 229 and 230, he shall im-  
3 mediately enter upon such office, and hold the same until the expira-  
4 tion of the term, in which such vacancy happened.

Laws 1847. Ch 303.

[Note. If the election of a Governor or Lieutenant Governor is cast upon the Legislature, there is obvious propriety in proceeding at once to a choice. This duty is imposed in the Constitution by the insertion of the word "forthwith," in Sec. 3, Art. 4; and it seems proper to provide by law the place, where the legislature shall meet, which is done by inserting the words, "in the assembly chamber," whenever provision is made for the choice of Governor, or Lieutenant Governor by the legislature.



The provisions for filling a vacancy in the office of Lieutenant Governor, is taken from Ch. 303, Laws of 1847. The Constitution makes no such provision, but Sec. 7, of article 4, contemplates filling a vacancy, and evidently refers to a vacancy in the office of Lieutenant Governor.

## TITLE 16.

### **Of the election of Secretary of State, Comptroller, Treasurer, Attorney-General, State Engineer and Surveyor, and clerk of the Court of Appeals, Canal Commissioners, and Inspectors of State Prison.**

- SECTION 233. Official term of officers named in this title.  
 234. Election of such officers.  
 235. Qualifications for the office of State Engineer and Surveyor.  
 236. Vacancies in the office of Canal Commissioner and Inspector of State Prison, supplied by election.  
 237. When vacancies filled by the Legislature.  
 238. When by the Governor.  
 239. When the Legislature may remove and re-appoint.  
 240. Term of appointed officers.

#### SEC. 233.

- 1 The secretary of state, comptroller, treasurer, attorney-general,
- 2 state engineer and surveyor are elected for two years, the clerk of the
- 3 court of appeals, canal commissioners and inspectors of state prisons for
- 4 three years.

#### SEC. 234.

- 1 A person shall be elected to the office of secretary of state, comp-
- 2 troller, treasurer, attorney-general, state engineer and surveyor and clerk
- 3 of the court of appeals, at the annual general election preceding the
- 4 expiration of the term of the incumbent in such offices respectively, or
- 5 next after a vacancy therein. One canal commissioner and one in-
- 6 spector of state prisons shall be elected at every annual general elec-
- 7 tion.

#### SEC. 235.

- 1 No person, except a practical engineer, is eligible to the office of
- 2 state engineer and surveyor.



## SEC. 236.

1 If the office of canal commissioner or inspector of state prisons be-  
2 comes vacant, a person shall be elected to fill such vacancy at the next  
3 annual general election held during the term in which the vacancy  
4 happened, unless the term of the incumbent in the office in which  
5 such vacancy happened, would have expired on the commencement  
6 of the political year next after such election. The person so elected  
7 shall enter upon the duties of the office, to which he shall be chosen,  
8 on the first day of January succeeding his election and hold the office  
9 for the residue of the unexpired term.

## SEC. 237.

1 Whenever a vacancy exists in any of the offices named in this title,  
2 except the office of inspector of state prisons, while the legislature is in  
3 session, the two houses thereof, by joint ballot shall appoint a person  
4 to fill such vacancy.

## SEC. 238.

1 A vacancy in the office of inspector of state prisons, shall be filled  
2 by the governor; and whenever a vacancy exists in any other of the  
3 offices named in this title, during a recess of the legislature, the gover-  
4 nor shall appoint a person to fill such vacancy.

## SEC. 239.

1 Any person appointed to any office by the governor, under the pro-  
2 vision in section 238, except to the office of state prison inspector, may  
3 be removed from such office by concurrent resolution of both houses



4 of the legislature; on such removal both houses shall forthwith, by  
5 joint ballot, appoint a person to the office made vacant thereby.

#### SEC. 240.

1 No person appointed to supply a vacancy in any of the offices named  
2 in this title shall hold such office, by virtue of such appointment, longer  
3 than the commencement of the political year, next succeeding the first  
4 annual election after the happening of such vacancy.

NOTE. No person appointed to fill a vacancy in an elective office, can "hold his office by virtue of such appointment, longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy." Const., Art. 10, § 5. The political year commences on the first of January. Const., Art. 10, § 6.

The provision in § 5, Art. 10, relates to the *person appointed* and his *term of office*, and by no implication whatever restrains the legislature from providing for the discharge of the duties of any office, after the commencement of the political year, succeeding the first election after the vacancy occurs. Such provisions are contained in the existing Statutes, and will be embraced in Chapter 3, in respect to all offices.

### TITLE 17.

#### **Of the election of Judges of the Court of Appeals, and Justices of the Supreme Court; their terms of Office and of filling vacancies therein.**

SECTION 244. General election of judges, and when held.

245. Judges of the court of appeals, and justices of the Supreme Court when elected; their terms of office.

246. When vacancies filled by election.

247. When supplied by the Governor.

#### SEC. 244.

1 An election for choosing a judge of the court of appeals, and justices  
2 of the supreme court, shall be held in the year one thousand eight  
3 hundred and forty nine, and in every second year thereafter. Such  
4 elections shall be termed "general election of judges," and shall be  
5 held at the time and place of holding the annual general elections.

Const. Art. 6. § 2, 4, 13.



## SEC. 245.

1 A judge of the court of appeals, shall be chosen by the electors of  
2 the state, and one justice of the supreme court in each judicial district,  
3 by the electors thereof, at each general election of judges. Their  
4 terms of office shall be eight years.

## SEC. 246.

1 A vacancy in the office of judge of the court of appeals, shall be sup-  
2 plied by the electors of the state, and in the office of justice of the su-  
3 preme court, in any district, by the electors thereof at the next general  
4 election of judges, held during the term in which such vacancy hap-  
5 pened. The person thus elected shall enter upon the duties of the  
6 office on being declared elected thereto, and hold the same for the  
7 residue of the unexpired term.

## SEC. 247.

1 The governor may appoint a person to fill a vacancy in the office of  
2 judge of the court of appeals, or justice of the supreme court, until such  
3 vacancy shall be supplied at a general election of judges.

Notes to Title 17. The provisions of Sec. 5, Art. 10 Const., does not apply to vacancies in the office of judges of the court of appeals, or justices of the supreme court. Vacancies in these offices are to be supplied at a general election of judges. Const. Art. 6. § 13.

The Constitution speaks of a "general election of judges" as distinguished from all other elections. One judge of the court of appeals, and one justice in each district are to be elected every second year. Const. Art. 6, § 2, 4, and the elections at which they are to be chosen and vacancies filled, are referred to in Sec. 13, of the same article, as "general election of judges."

Sec. 11, Ch. 240, sess. laws 1847, requiring vacancies in these offices to be filled at the general annual elections next after the vacancy occurs, is repugnant to the Constitution, as under its provisions, they may be supplied at an election, which is not a general election of judges.

The Governor is vested with the power of filling a vacancy in these offices, "until it shall be supplied at the next general election of judges, when it shall be filled by election for the residue of the term." Const. Art. 6. § 13. The best interpretation we can give to these words in the Constitution is, that vacancies in these offices shall be filled at the first general election of judges, at which they can be, after they occur.



## TITLE 18.

**Of the election of Senators and Members of the Assembly; disqualifications of Members, and vacating their seats.**

- SECTION 248. How Senators, and members of Assembly chosen.
249. Members of the legislature not to be appointed to the Senate of United States.
250. Members of Congress and certain officers under the United States, not to hold seats in the Legislature.
251. Election of members of the Legislature to Congress, or appointed to office by the United States, to vacate their seats.
252. Members of the Legislature, not to be appointed to office by the Governor, and Senate or the Legislature.
253. When members of Assembly deemed to have accepted certain offices.

## SEC. 248.

- 1 One senator is elected in each senate, and one member of assembly
- 2 in each assembly district; senators are chosen for two years, and mem-
- 3 bers of assembly for one year.

Const. Art. 3. § 1.

## SEC. 249.

- 1 Members of the legislature are ineligible to the office of senator of
- 2 the United States; and every appointment, by the governor, or the legis-
- 3 lature, of any member thereof to the senate of the United States, shall
- 4 be void.

Cons. Art. 3, § 7.

## SEC. 250.

- 1 No member of congress, or person holding a judicial or military office
- 2 under the United States, shall hold a seat in the legislature.

Cons. Art. 2, § 8.

## SEC. 251.

- 1 If any person, after his election as a member of the legislature, shall
- 2 be elected to congress, or appointed to any civil or military office under



3 the government of the United States, his acceptance thereof shall  
4 vacate his seat.

Cons. Art. 3, § 8.

Under the former Constitution, a person appointed to office, under the United States, after his election, and before the commencement of the legislative term, was entitled to his seat. Assem. Jour. 1845, p. 80, 139. Under the existing Constitution, the appointment of a person to such office after an election to the legislature, would, if he accepted the office, prevent him taking his seat.

#### SEC. 252.

1 No member of the legislature, during the term for which he shall  
2 have been elected, shall receive any civil appointment from the gover-  
3 nor, the governor and senate, or the legislature.

Cons. Art. 3, § 7.

#### SEC. 253.

1 If any person, after being elected a member of the legislature is  
2 elected to congress, he shall be deemed to have accepted that office on  
3 the commencement of the term thereof, unless before that period, he  
4 shall have given notice in writing, to the secretary of state, of his de-  
5 termination not to accept such office. If elected to fill a vacancy in  
6 the office of representative in congress, he shall be deemed to have ac-  
7 cepted thereof, unless he give such notice in fifteen days after it shall  
8 be determined he is elected.

Somewhat varied from the existing statute, and the provision new in respect to an election to fill a vacancy. Sec. 6, Title 2, Ch. 5, Part 1, Rev. Stat.



## TITLE 19.

**Of election of Officers in Counties, duration of terms of Office and supplying vacancies.**

SECTION 254. Sheriffs, Clerks and other county officers when elected.

255. Duration of their offices.

256. Supplying vacancies.

## SEC. 254.

1 One sheriff, one county clerk, four coroners, one district attorney,  
2 one county judge, two justices to be chosen from the justices of the  
3 peace of each county, whose term of office will not expire within one  
4 year after their election, to be styled assistant judges of the court of  
5 sessions; and in counties having a population exceeding forty thousand,  
6 an officer to perform the duties of surrogate to be styled and known as  
7 surrogate, shall be elected in each of the counties of this state, at the  
8 annual general election preceeding the expiration of the term of the  
9 incumbent in such offices respectively, or next after a vacancy  
10 therein.

Const. Art. 6, § 14. Art. 10, § 1.

## SEC. 255.

1 Sheriffs, clerks, and district attorneys shall hold their offices three  
2 years; county judges, coroners and surrogates, four years; assistant  
3 judges of the court of sessions, one year.

## SEC. 256.

1 Whenever a vacancy shall occur in the office of sheriff, county clerk,  
2 district attorney, county judge or surrogate, not occasioned by their re-  
3 moval from office by the governor, or senate, the board of supervisors  
4 of the county, in which the vacancy happened, shall appoint a person  
5 to the vacant office, who shall hold such office till the commencement



6 of the political year succeeding the first annual general election after  
7 the happening of the vacancy.

In ch. 3, provisions are made for removal of officers named in this Title, and for filling a vacancy, occasioned thereby, by the governor. It would not be wise to allow any county board to re-appoint an officer removed for good cause.

NOTE. We have omitted to designate the counties in which surrogates are to be chosen as separate officers. The law of 1847, Ch. 276, § 11, seems founded on the idea, that this power was, by the Constitution, vested in the boards of supervisors. Sec. 15 of Article 6, authorises the Legislature to provide, on application of the board of supervisors of any county, for the election of not more than two local officers, to discharge the duties of county judge and surrogate, in case of vacancies in those offices; but the power of providing for the election of a separate officer, as surrogate, in counties having a population exceeding forty thousand, is exclusively with the Legislature.

The propriety of electing a separate officer, as surrogate, depends upon the duties to be performed by the county judge in the county courts. If that is left to the local authorities, it will be impossible for the Legislature, understandingly, to determine in what counties surrogates shall be elected.

The county courts, under the Constitution, cannot, in our opinion, be vested with jurisdiction in suits and actions at common law. We have given this question very careful consideration, and are prepared to assign the reasons for our conclusion.

The amount of criminal business in the several counties may be ascertained from the returns of the statistics of crime to the Secretary of State. A court in session from fifteen to twenty days in counties not containing cities or large villages, would dispose of the criminal business of those counties, and if the whole time necessarily employed in holding the county courts therein should amount, on an average, to thirty days in each year, a competent officer could discharge that duty, in addition to his duties as surrogate.

We have not embraced in this title any provision for electing county superintendents of the poor, or county treasurers. The laws under which they are at present elected are very defective; and special provisions relating to their election, removals and the security to be given by them are indispensable. A single amendment will adapt this title to any plan ultimately fixed upon, for electing these officers.

Before it shall be definitely determined, that county Treasurers and Superintendants of the Poor shall be elected, it is very important to ascertain whether there is, under the Constitution, any authority in the Legislature to provide for their removal.

Sheriffs, clerks of counties, coroners, and district attorneys may be removed by the Governor. Cons., Art. 10, § 1. Judges of the court of Appeals, and justices' of the Supreme Court, by the Legislature. Art. 6, § 11. Justices of the Peace and judges of inferiors courts not of record, by certain county and city courts. Art. 6, § 17. All other judicial officers, by the Senate, on the recommendation of the Governor. Art. 6, § 11. The Constitution requires that "provision be made by law for the removal for misconduct or malversation in office of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal." Cons. Art 10, § 7.



Where an office is created by the Constitution, and the mode of appointment or election prescribed, and the term of the office fixed, the power of summary removal, without a special grant, does not reside in any department of the government. The exercise of such a power would deprive a member of the State, of rights and privileges secured to him, otherwise than by due course of law. Cons., Art. 1, § 1. But, where the Constitution, which creates the office, provides for removal in a particular and prescribed manner, it is a condition attached to the office, and whoever accepts of it must be deemed to hold it subject to the condition, and may be removed in the manner prescribed. The Legislature is vested with the power of creating offices, and may annex any condition to their tenure it considers expedient and proper, unless restrained by the Constitution. The offices of county Treasurer and Superintendents of the Poor are of legislative creation; under the Constitution, these officers may be elected or appointed, and unless prohibited, the Legislature may provide for their removal in any manner or mode it sees fit, and, as in the case of a Constitutional officer, whoever accepts the office, thereby assents to the exercise of the power of removal as prescribed in the law creating the office. The language of the Constitution seems to imply that if the Legislature create a new local officer and make him elective, it shall not provide for his removal. *Provision shall be made for removal of all officers not local or legislative and who shall be elected at general elections.* This may be held equivalent to saying, provision shall not be made for the removal of any local or legislative officer, who shall be elected at general elections. If this be the true construction, the Legislature may provide for the election of county Treasurers and Superintendents of the Poor, but cannot provide for their removal if chosen at general elections.

There are no officers requiring to be subject to summary and immediate removal more than county Treasurers. From the creation of the officer till the last session they have been appointed by the boards of Supervisors during pleasure. One of the standing committees of the convention reported provisions for electing county Treasurers and Superintendents of the Poor which was rejected. Con. Doc. 463, 454; and although it is not probable the Convention intended to prohibit the Legislature from providing for the removal of such local officers as might be created and made elective, the language of the Constitution seems to admit of such a construction; and however preferable their election may be deemed, to that of appointment, it is presumed the people would not be willing for the mere sake of making them elective, that they should be placed beyond any power of removal.

## TITLE 20.

### General provisions applicable to this Chapter and the Officers therein named.

- SECTION 257. Certain provisions not to be applicable to the city and county of New-York.  
 258. Officers elected and in office at certain periods, to hold till the expiration of their terms.  
 259. When officers to be elected in new counties.

### SEC. 257.

- 1 The provisions of title 19 shall not extend to or be applicable to the
- 2 city and county of New-York.



## SEC. 258.

1 All persons holding any office named in Title 19, on the first day of  
2 January, one thousand eight hundred and forty-seven, to which he  
3 had been elected prior thereto, and every person elected to any office  
4 named in this chapter, since that period, shall hold such office during  
5 the term thereof, as fixed by the provisions of the Constitution, or  
6 the Statutes in force at their election.

## SEC. 259.

1 Whenever a new county is created, all the officers named in title 19,  
2 to be elected therein, shall be chosen at the first annual general elec-  
3 tion, after the creation of such county.



## CHAPTER 3.

General provisions respecting the appointment and election of officers; the term of office and duration of their terms. Nominations and commissions of officers; the office of officers and official bonds; resignation, suspension and removal; and the delivery of books and papers by officers to their successors.

ARTICLE 1. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.

ARTICLE 2. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.

ARTICLE 3. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.

ARTICLE 4. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.

ARTICLE 5. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.

ARTICLE 6. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.

ARTICLE 7. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.

ARTICLE 8. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.

ARTICLE 9. The provisions of this chapter shall apply to all officers of the county, whether appointed or elected, and to all officers of the county who are appointed or elected to office by the county board. The provisions of this chapter shall also apply to all officers of the county who are appointed or elected to office by the county board.



## **CHAPTER 3.**

General provisions respecting the appointment and Election of Officers; the commencement and duration of their terms. Nominations and commissions of Officers; Oaths of Office and official bonds; Resignations, Vacancies, Suspensions and removals; and the delivery of books and papers by Officers to their Successors.

- TITLE 21. General provisions respecting the appointment and Election of Officers; the commencement and duration of their terms.**
- 22. Of nominations to Office; and the commissions of Officers.**
  - 23. Oaths of office and official bonds; notice of elections and appointment of officers and commencement of official terms.**
  - 24. Resignations of, vacancies in and removals from office; duty of certain officers thereupon.**
  - 25. Proceedings to compel the delivery of books and papers, by officers to their successors.**

### **TITLE 21.**

**General provisions respecting the appointment and Election of Officers; the commencement and duration of their terms.**

- SECTION 260.** When officers to enter upon their duties.
- 261. How appointed when no special mode provided.
  - 262. Assistants and deputies, how appointed.
  - 263. Their number, how limited.
  - 264. Powers of deputies.
  - 265. Powers of deputy sheriff, when to cease.
  - 266. Duration of officers not limited by law.
  - 267. Certain officers to act, till successors qualified.

### **SEC. 260.**

1 All officers elective by the people, at the annual general elections,  
2 shall enter upon the duties of their respective offices on the first day of  
3 January following the election at which they shall be chosen; unless  
4 when elected to fill a vacancy, the law authorising their election, de-  
5 signates a different period.

Sec. 3, Art. 1. Title 6, Ch. 5. Part 1, Rev. Stat.

Const., Art. 10, Sec. 6.



## SEC. 261.

1 Every officer, the mode of whose appointment is not prescribed by  
2 the constitution, or is not, or shall not be prescribed by law, shall be  
3 nominated by the governor, and appointed by him with the consent of  
4 the Senate.

Sec. 4, Art. 1. Title 6. Ch. 5. Part 1 Rev. Stat.  
Const., Art. 10, Sec. 2.

## SEC. 262.

1 All assistants, deputies, and other subordinate officers of every de-  
2 scription, whose appointment is not, or shall not be specially provided  
3 for, shall be appointed by the body, board or officer to which, or to  
4 whom, they shall be respectively subordinate.

Sec. 5. Art. 1. Title 6. Ch. 5. Part 1, Rev. Stat.

## SEC. 263.

1 When the number of subordinate officers is not, or shall not be  
2 directed by law, it shall be limited at the descretion of the appointing  
3 power.

Sec. 6. Art. 1. Title 6. Ch. 5. Part 1. Rev. Stat.

## SEC. 264.

1 In all cases, not otherwise provided for, the deputy shall posses the  
2 powers and perform the duties attached by law to the office of his prin-  
3 cipal, during a vacancy in such office, and during the absence of his  
4 principal.

Sec. 7. Art. 1. Title 6. Ch. 5. Part 1. Rev. Stat.

## SEC. 265.

1 No deputy sheriff shall perform any of the duties, or powers of sheriff  
2 after the office of his principal becomes vacant.

10 Paige's Rep. 232, 233.



## SEC. 266.

1 Every office of which the duration is not prescribed by the constitu-  
2 tion, or is not or shall not be declared by law, shall be held during the  
3 pleasure of the authority making the appointment.

Sec. 8. Art. 1. Title 6. Ch. 5. Part 1. Rev. Stat.

## SEC. 267.

1 Every officer duly appointed or elected to any office, except members  
2 of the legislature, senators and representatives in congress, who shall  
3 have duly entered upon the duties of his office, shall continue to dis-  
4 charge the duties thereof, although his term of office shall have ex-  
5 pired, until a successor in such office shall be duly qualified.

Sec. 9, 10. Art. 1, Title 6. ch. 5. Part 1, Rev. Stat.

The corresponding section in the Revised Statutes, excepted the chancellor, judges of the supreme court and circuit judges, for the reason that by the Constitution, their term of office expired when they arrived at sixty years of age.

Where the Constitution omits to make provisions, and when those specially made, are found insufficient, or do not extend to an emergency that arises which, if unprovided for, would prevent the exercise of any power, essential for the preservation or continuance of the government, or any department thereof, the authority to provide for the exercise of such power necessarily resides in the legislature.

The provision as reported, will continue all the officers of the state in office, till their successors are qualified. If adopted there can be no time when the executive or other authority will be suspended.



## TITLE 22.

**Of nominations to office, and the commissions of Officers.**

- SECTION 268. Nominations by the Governor to the Senate, how made.  
269. Duty of clerk when nominations are approved by the Senate.  
270. Commissions of civil officers appointed by the Governor.  
271. Secretary of State to send commissions to county clerk.  
272. Certificates of boards of canvassers evidence of election.  
273. Resolutions of boards, and certificates of appointments to office, evidence of such appointment.  
274. How Legislature to proceed to make appointments to fill vacancies.  
275. Resolutions of appointment by the Legislature to be evidence.

## SEC. 268.

1 All nominations made by the governor to the senate, shall be in  
2 writing, containing the place of residence of the person nominated, and  
3 except in the nomination of general state officers, shall designate the  
4 district, county, city or place, for which the officer nominated is intend-  
5 ed to be appointed.

Altered from Sec. 11, Title 6. Ch. 5. Part 1, R. S.

## SEC. 269.

1 Whenever the nomination by the governor, of any person to any  
2 civil office, shall have been approved by the senate, it shall be the duty  
3 of the clerk of the senate, immediately to deliver a copy of the resolu-  
4 tion of such approval, certified by the president and clerk of the senate,  
5 to the governor.

Altered from Sec. 12, Title 6, Ch. 5, Part 1, R. S.

## SEC. 270.

1 The commissions of all civil officers appointed by the governor, or  
2 the governor and senate, shall be signed by the governor, recorded in  
3 the office of the secretary of state and attested by him under the seal  
4 of the state.

Sec. 14, Title 6, Ch. 5, Part 1, R. S.



## SEC. 271.

1 The secretary of state shall send such commission by mail, to the  
2 clerk of the county where the person so appointed resides.

## SEC. 272.

1 The certificates of boards of canvassers, authorised to canvass the  
2 votes given for any elective office, shall be evidence of the election of  
3 the persons therein declared to have been elected.

Sec. 17, Title 6, Ch. 5, Part 1, R. S.

## SEC. 273.

1 The resolution of any board or body appointing any person to office,  
2 shall be entered in the minutes of the proceedings of such board or  
3 body, and a copy thereof, signed by the presiding officer and clerk  
4 of such board or body, shall be evidence of the appointment of, and  
5 the commission of the officer thus appointed; when any appointment  
6 shall be made by any board or body, not having a presiding officer and  
7 clerk, the certificate of such body or board, or of a majority of them,  
8 shall be evidence of such appointment and the commission of the  
9 officer thus appointed; and the certificate of any officer or officers  
10 authorised to make an appointment to office, shall be evidence of every  
11 appointment made by him, or them, and the commission of the officer  
12 thus appointed.

## SEC. 274.

1 Whenever any appointment to any office by the legislature shall be-  
2 come necessary to supply a vacancy, they shall fix, by concurrent reso-  
3 lution, the day on which they will make such appointment.



## SEC. 275.

1 A copy of the resolution by which any appointment shall be made  
2 by the legislature, to fill a vacancy in office, certified by the presiding  
3 officers of both houses and their clerks, shall be evidence of every such  
4 appointment and the commission of the officer thus appointed.

## TITLE 23.

**Oaths of Office and official bonds; notice of Elections or appointments to  
Office and commencement of official terms.**

- SECTION 276. What officers to take the oath of office.  
277. When such oath to be taken.  
278. Before whom taken.  
279. Where deposited and within what time.  
280. Deputies to take the same oath as their principals.  
281. When official bonds to be filed.  
282. Official bonds to be in force while the officers executing them discharge the duties of their offices.  
283. Sureties not to be charged after renewal of official bonds.  
284. Any person elected to office, discharging its duties before filing official oath and bond, guilty of misdemeanor.  
285. When Senators and members of assembly to take the oath of office.  
286. At what time the terms of persons appointed to office to commence.  
287. What to be deemed notice of an election or appointment to office.

## SEC. 276.

1 Every person chosen to any office, elective at the annual general elec-  
2 tions, or who shall be appointed to any civil office,  
3 By the governor, or  
4 By the governor with the consent of the senate, or  
5 By the canal board, or  
6 By the commissioners of the canal fund, or  
7 By the governor and any other public officer or officers, or  
8 By the legislature, or  
9 By any board of county supervisors.  
10 Shall before entering upon the duties of such office, take and sub-  
11 scribe the following oath or affirmation, "I do solemnly swear [or  
12 "affirm" as the case may be,] "that I will support the constitution of



13 the United States, and the constitution of the State of New-York, and  
14 that I will faithfully discharge the duties of the office of" — "ac-  
15 cording to the best of my abilities."

Const. Art. 12. § 1.

SEC. 277.

1 Whenever a different time shall not be prescribed by law, such oath  
2 of office shall be taken and subscribed, and deposited in the proper  
3 office, within fifteen days after the officer shall be notified of his elec-  
4 tion or appointment, or within fifteen days after the commencement of  
5 his term of office.

SEC. 278.

1 The oath may be taken and subscribed, except where otherwise pro-  
2 vided, before any justice of the supreme court, any county judge, the  
3 secretary of state, the attorney-general, the lieutenant-governor, the  
4 president of the senate for the time being, the speaker of the house of  
5 assembly, the mayor or recorder of any city, the clerk of any county or  
6 city, or of any court of record.

SEC. 279.

1 Every such oath, duly certified by the officer before whom the same  
2 was taken, shall be deposited within the time required by law as follows:

3 1. The oath of the governor, lieutenant-governor, judges of the court  
4 of appeals, justices of the supreme court, comptroller, secretary of state,  
5 attorney-general, treasurer, state-engineer and surveyor, state reporter,  
6 canal commissioners, inspectors of state prisons, clerk of the court of  
7 appeals; members of the senate and assembly, clerks, sergeants-at-  
8 arms and door-keepers thereof; and all other general state officers, ex-  
9 cept where otherwise directed; in the office of the secretary of state.



10   2. The oath of all officers elected by the electors of any county, or  
11 appointed by the boards of supervisors thereof; notaries public, superin-  
12 tendents of canal repairs, collectors of canal tolls, and of all officers  
13 whose duties are local, or whose residence in any particular district or  
14 county is prescribed by law, in the office of the clerk of the county in  
15 which they reside.

## SEC. 280.

1   Whenever any officer is authorized or required by law to appoint a  
2 deputy, such deputy shall within fifteen days after his appointment,  
3 take the same oath, and file a certificate thereof in the same office, as is  
4 required to be taken and filed by the officer appointing him.

## SEC. 281.

1   Whenever any officer is required by law to execute any official bond,  
2 he shall cause the same to be filed in the proper office, within the time  
3 herein prescribed for filing his oath of office, unless otherwise provided  
4 by law.

## SEC. 282.

1   Every bond executed by any public officer pursuant to law, for the  
2 faithful discharge of the duties of his office, shall be deemed to be in  
3 force, and obligatory upon the principal and sureties therein, so long as  
4 such officer shall continue to discharge the duties of his office, and un-  
5 til his successor shall be appointed and duly qualified.

## SEC. 283.

1   But the sureties in any such bond, shall be exonerated from all liabili-  
2 ty by reason thereof, for all acts or omissions of their principal, after he  
3 shall have duly renewed any official bond pursuant to law.



## SEC. 284.

1 If any person shall execute any of the duties or functions of any  
2 office, without having taken and subscribed the oath of office required  
3 by law, or without having executed and filed in the proper office any  
4 bond required by law, he shall be deemed guilty of a misdemeanor,  
5 punishable by fine or imprisonment.

## SEC. 285.

1 Members of the assembly may take the oath of office, at any time  
2 during the term, and senators at any time during the first session of the  
3 term, to which they shall be respectively elected.

## SEC. 286.

1 Every person appointed to fill an existing vacancy, shall on being so  
2 appointed, enter upon the duties of his office ; and every person ap-  
3 pointed to an office about to become vacant shall enter upon the duties  
4 thereof on such vacancy taking place, and every person appointed to  
5 succeed another in office, shall enter upon the duties thereof, on the ex-  
6 piration of the term of the incumbent then in office.

## SEC. 287.

1 The publication of any canvass by any board of canvassers, as re-  
2 quired by law, of the result of any election, shall be notice to all per-  
3 sons chosen thereat to any office, of their election, and every person  
4 appointed to any office shall be deemed to have notice thereof at the  
5 date of his commission, or at the time the proper evidence of his ap-  
6 pointment is made, as authorised by law.



## TITLE 24.

**Resignation of, vacancies in, and removals from office.; duties of certain Officers thereupon.**

SECTION 288. Resignations, how made.

289. Duty of the Governor, Senate and Legislature, on resignations of, and removals from office.

290, 291. When certain offices deemed vacant.

292. Courts to give notice to the Governor of the conviction of officers of certain crimes.

293. County clerk to give notice to the Governor and Secretary of State of vacancies.

294, 295. Governor may remove officers appointed by him, and Collectors and Receivers of public money in certain cases.

296. Duty of Comptroller, Treasurer and courts to give notice to the Governor of misconduct of certain officers.

297. Governor to declare offices vacant when judgment obtained on their official bonds.

298. Officers appointed by the Governor, with consent of the Senate, may with like consent be removed by him.

299, 300. Vacancies in offices filled by the Legislature or the Governor, supplied by him.

301. Judges of the court of Appeals and justices of the Supreme court, how removed.

302. Other judicial officers, how removed.

303. Sheriffs, clerks and other county officers, how removed.

304. Certain officers to have a copy of charges against them.

305. Governor to direct testimony to be taken, and by whom, and how taken.

306. How witnesses compelled to attend.

307. Governor to order District Attorney or other person, to attend the examination of witnesses.

308, 309. Depositions how taken and certified and returned.

310. Governor or Senate to proceed to determine on the question of removal, and the accused to be heard.

311. Copy of charges and notices, how served on the accused.

312. Justices of the peace and judges or justices of inferior courts and their clerks, how removed.

313. To have copies of complaint and witnesses to be examined.

314. Certain courts to have exclusive jurisdiction, and no officer tried twice on the same complaint.

315. The District Attorney's duty on hearing complaint, and the accused entitled to counsel.

316. Subpœnas for witnesses to issue, and penalties on witnesses for disobedience.

317. Governor with assent of the Senate to supply vacancies in certain judicial officers.

318. Governor to supply vacancies in certain offices made vacant by removals.

319. When governor may supersede the treasurer from office, and appoint a person to discharge the duties of treasurer.

320. Governor to inform the Legislature of the suspension of the treasurer. Proceedings of the Legislature thereon.

321. Certain state officers may be removed from office by the Legislature.

322. Notice to be given to such officers, and they to be heard in their defence.

323. Copy of resolutions of appointment by the Legislature to be made and filed.

324. On failure to elect certain officers, boards of canvassers to make and file certificates of such failure.

325. Duty of Secretary of State, and county clerks in respect to such certificates.

326. Duty of clerk of the Senate on the removal of an officer by that body.

327. Duty of clerks of both houses on removals by the Legislature from office.

328. Duty of Governor, on removal or suspension of an officer.

329. Duty of Governor on receiving notice of, or on declaring a vacancy in office.

330. Duty of certain officers on a failure to file official bonds and oaths.

331. What notices of vacancies in office to contain.

332. Notices to boards of supervisors, of vacancies to be sent to county clerks in certain cases.



- 333. Duty of Secretary of State, on removal or suspension of certain officer.
- 334. Clerks of counties to give notice of vacancies proper to be filled by boards of supervisors, and meetings of such board to be called.
- 335. When county clerk to call such meetings.
- 336. How supervisors to be notified of such meetings
- 337. Duration of the term of certain officers appointed to fill vacancies.

## SEC. 288.

1 Resignations shall be made as follows:

2 1. By the governor and lieutenant governor to the legislature.

3 2. By the secretary of state, comptroller, treasurer, attorney-general,  
4 state engineer and surveyor, canal commissioners, inspectors of state  
5 prisons, judges of the court of appeals, justices of the supreme court,  
6 and by all officers appointed by the governor, or by him with the con-  
7 sent of the senate, or by him with any other officer or officers; to the  
8 governor.

9 3. By senators to the president of the senate, and by members of the  
10 assembly to the speaker thereof.

11 4. By all officers elective by the electors of any county, to the secre-  
12 tary of state.

13 5. By all appointed officers to the body, board or officer appointing  
14 them.

15 A resignation may be made to take effect at a future day; in such  
16 case an appointment may be made to the office about to become vacant,  
17 at any time after such resignation.

## SEC. 289.

1 The governor shall give notice of all resignations made to him, by  
2 any elective officer, to the secretary of state; and he shall also give  
3 notice of all resignations made to him, to the body board or officer, in



4 whom the power of appointment to the vacant office is vested. The  
5 president of the senate, and speaker of the assembly shall also give  
6 notice of all resignations made to the legislature, or to them respective-  
7 ly, to the secretary of state.

## SEC. 290.

1 Every office shall be deemed vacant on the expiration of the official  
2 term of any person elected or appointed thereto, if no person shall be  
3 then entitled to such office; and if there shall then be any person en-  
4 titled to such office, who shall not within the time required by law, be-  
5 come qualified to take upon himself the duties thereof, such office shall  
6 be deemed vacant from the expiration of that period; and every office  
7 shall be vacant on the happening of either of the following events,  
8 during the term of any incumbent therein.

9 1. The death of the incumbent.

10 2. His resignation.

11 3. His removal from office.

12 4. His ceasing to be an inhabitant of the state, or of the district,  
13 county, town or city within which the duties of his office are required  
14 to be discharged.

15 5. His conviction of an infamous crime, or of any offence involving  
16 a violation of his oath of office.

17 6. His refusal or neglect to give or renew any bond, within the time  
18 prescribed by law.

19 7. The decision of a competent tribunal, declaring void his election  
20 or appointment.

Const. Art. 10. § 8.

§ 34. Art. 4, Title 6, Ch. 5. Part 1, Rev. Stat.



## SEC. 291.

1 Whenever any person elected or appointed to any office, is required to  
2 take the oath of office and file a certificate thereof, or execute and file  
3 an official bond, his neglect to do either shall forfeit his right to such  
4 office.

## SEC. 292.

1 Whenever any officer shall be convicted of an infamous crime, or of  
2 an offence involving a violation of his oath of office, and whenever the  
3 election or appointment of any person shall be declared void, the court  
4 before which such conviction shall be had, or by which such decision  
5 shall be made, shall immediately give notice thereof, to the governor,  
6 stating the cause of such conviction or decision.

## SEC. 293.

1 Whenever any officer shall die before the expiration of his term of  
2 office, or shall remove from the county, district or place for which he  
3 was appointed, or within which the duties of his office are required to  
4 be discharged, the county clerk of the county in which such officer re-  
5 sided, shall immediately give notice of the vacancy occasioned by such  
6 death or removal, to the secretary of state; and unless such vacancy  
7 shall occur in an office proper to be supplied by the authorities of the  
8 county in which such officer resided, the secretary of state shall give  
9 notice thereof to the body, board or officer authorised to supply such  
10 vacancy.

## SEC. 294.

1 The body, board or officer, authorised to make an appointment to fill  
2 a vacancy, may remove all officers by them or by him so appointed; but



3 the governor shall not, while the legislature is in session, remove any  
4 officer he is prohibited from appointing during such session.

To conform to the provisions of Title 16, suspending the governor's power of appointment during a session, and vesting that power, in certain cases, in the Legislature.

SEC. 295.

1 Any collector or receiver of public monies, appointed by the legisla-  
2 ture, by the governor and senate, or by the governor, may be removed  
3 by the governor, in case it shall appear to him that such officer has, in  
4 any particular, violated his duty.

SEC. 296.

1 It is the duty of the comptroller, secretary of state and judges or  
2 justices of any court of record, to communicate to the governor any  
3 violation or neglect of duty, that may come to their knowledge, by  
4 any collector or receiver of public monies, or clerk of any court of  
5 record.

SEC. 297.

1 The governor may also declare vacant, the office of every officer re-  
2 quired by law to execute an official bond, whenever a judgment shall  
3 be obtained against such officer for a breach of the condition of such  
4 bond.

SEC. 298.

1 All officers appointed by the governor with the consent of the senate,  
2 may be removed by the senate, on the recommendation of the governor.



## SEC. 299.

1 The governor may supply all vacancies, that may happen during the  
2 recess of the senate, in any office to which an appointment has or shall  
3 be made by him, with the consent of the senate; but the term of the  
4 person appointed to supply such vacancy, shall expire at the end of  
5 twenty days from the commencement of the next meeting of the  
6 senate.

## SEC. 300.

1 Whenever a vacancy shall occur, during the recess of the legislature,  
2 in any office filled by the legislature, the governor shall appoint a person  
3 to execute the duties of such office, until the vacancy shall be supplied  
4 as prescribed by law; but the person so appointed, may be removed at  
5 any time by the legislature.

## SEC. 301.

1 Judges of the court of appeals and justices of the supreme court, may  
2 be removed from office, by concurrent resolution of both houses of the  
3 legislature, if two-thirds of all the members elected to the assembly,  
4 and a majority of all the members elected to the senate, concur therein.  
5 On the question of removal the ayes and noes shall be entered upon  
6 the journals of both houses; but no such removal shall be made, unless  
7 the cause thereof be first entered on the journals of both houses, and the  
8 party complained of, served with a copy of the complaint against him,  
9 and afforded an opportunity of being heard in his defence.

Const., Art. 6, Sec. 11.

## SEC. 302.

1 All other judicial officers except justices of the peace and judges and jus-  
2 tices of inferior courts, not of record, may be removed by the senate, on



3 the recommendation of the governor, for misconduct or malversation in  
4 office.

Const., Art. 6, Sec. 11.

The provision of the Constitution, contained in this section, shows the necessity of an accurate definition of judicial officers, and the difficulties that will arise if judicial and administrative duties appertain to a single office.

#### SEC. 303.

1 Sheriffs, clerks of counties, the register and clerk of the city and  
2 county of New-York, coroners and district attorneys may, within the  
3 time for which they shall have been elected, be removed from office by  
4 the governor, for misconduct or malversation in office.

Const., Art. 10, Sec. 1.

#### SEC. 304.

1 Before any officer named in sections 302 and 303 shall be removed  
2 from office, and before any testimony shall be taken against any such  
3 officer, as in this title is provided, he shall be served with a copy of the  
4 charges and accusations against him.

#### SEC. 305.

1 The governor shall have power, and may direct that the testimony  
2 against, or in behalf of any accused officer, named in sections 302 and  
3 303, in respect to the charges alleged against him as the ground of his  
4 removal from office, be taken in the county or counties in which the  
5 witnesses reside, before any judge of any court of record, and on such  
6 notice to the accused officer, or to the person or officer required or auth-  
7 orized to attend to the taking of such testimony against the accused,  
8 as shall be directed by the governor; and if it shall be made to appear  
9 to the governor, that witnesses for or against the accused reside in differ-



10 ent counties, he may direct such testimony to be taken by some judge  
11 of a court of record residing in any of such counties, or that any one  
12 judge of such court attend in such different counties, or in any one or  
13 more of them, and take the depositions of such witnesses.

## SEC. 306.

1 At the request of the accused officer, or the person or officer, required  
2 or authorized to attend to the taking of testimony against such accused  
3 officer, the judge before whom such testimony is ordered to be taken,  
4 shall issue subpœnas requiring the attendance of witnesses before him,  
5 at a time and place to be named therein; and any person refusing or  
6 neglecting to obey such subpœna, shall be deemed guilty of a misde-  
7 meanor; but no witness shall be required to attend before any judge,  
8 out of the county in which such witness resides

## SEC. 307.

1 On making any order for taking testimony, as provided in this  
2 title, the governor, shall require the district attorney of, or some  
3 other person in the county, in which such testimony is ordered to  
4 be taken, to attend before the judge authorised to take the same, and  
5 examine the witnesses against the accused officer, and cross examine  
6 those that may be produced and examined by him.

## SEC. 308.

1 The judge before whom such testimony is ordered to be taken,  
2 shall reduce, or cause the depositions of all witnesses, for or against the  
3 accused officer, to be reduced to writing, and the same to be read to  
4 and subscribed by them, and the deposition of each witness shall  
5 be sworn to by him, or attested by his affirmation, and certified by the  
6 judge taking the same, and by him transmitted to the governor.



## SEC. 309.

1 Every answer given by any witness, on any examination taken pur-  
2 suant to section 308, shall be reduced to writing, if requested by the  
3 accused, or the officer or person required to examine the witnesses  
4 against the accused.

## SEC. 310.

1 The governor, after such testimony shall be taken, shall allow the  
2 accused to be heard in his defence, if such testimony be taken against  
3 an officer he has power to remove: If taken against an officer the sen-  
4 ate has power to remove on the recommendation of the governor, he  
5 shall, if the senate is in session, or immediately on the commencement  
6 of the next session thereof, transmit to that body the depositions so  
7 taken, and the charges against such officer. The senate shall proceed  
8 to consider the same; but before taking any final question thereon  
9 shall allow the accused an opportunity of being heard in his defence.  
10 On the question of removal the ayes and noes shall be taken, and the  
11 cause thereof entered on the journal.

## SEC. 311.

1 In cases where by the provisions of this title, notice of taking testi-  
2 mony against any accused officer, or a copy of the charges and accusa-  
3 tion against him is required to be served on such officer, such service  
4 may be made, either by delivering such charges and notice to such  
5 officer personally, or by sending the same to him by mail, directed to  
6 him at his place of residence.

## SEC. 312.

1 Justices of the peace, and judges or justices of inferior courts, not of  
2 record and their clerks for misconduct or malversation in office, may  
3 be removed therefrom as follows:



4 1. All justices of the peace elected in any town, by the county court  
5 of the county in which they were elected.

6 Judges or justices of inferior courts not of record and their clerks,  
7 elected in any city or village by any court of record, having civil juris-  
8 diction in the city or county in which they are elected, or in which  
9 they are required by law to exercise the duties of their office.

## SEC. 313.

1 Before making any removal as authorized in the preceeding section,  
2 the court having jurisdiction, shall assign a day for the hearing of the  
3 charges or accusation against the accused officer, and cause a copy  
4 thereof to be served on him with notice of the time of hearing; at  
5 the time appointed the court shall proceed to examine the witnessess  
6 for and against the accused, and after hearing the same, and allowing  
7 the accused an opportunity of being heard in his defence, shall by an  
8 order to be entered in the minutes of the court, remove the accused  
9 from office or dismiss the complaint against him. Every order of  
10 removal shall assign the offence for which such order was made.

Const. Art. 6, § 17.

## SEC. 314.

1 The court before whom any complaint is first made, as provided in  
2 section 312, shall have exclusive jurisdiction thereof, and proceed to  
3 investigate and decide the same, as provided in section 313; and no  
4 officer shall be made to answer twice to the same complaint.

## SEC. 315.

1 The district attorney of the county in which such proceedings are  
2 had, shall attend to the taking of the testimony against the accused



3 officer, and examine the witnesses against him and cross examine those  
4 in his favor; but the court may direct that this duty be performed by  
5 some other person; and the accused shall be entitled to the benefit of  
6 counsel.

SEC. 316.

1 Subpœnas for the attendance of witnesses, shall issue out of the court  
2 having jurisdiction of the complaint against any officer named in sec-  
3 tion 312, and may be served as subpœnas are served in civil actions; and  
4 the court shall have the same power to compel the attendance of wit-  
5 nesses; and witnesses disobeying any such subpœna, shall be subject  
6 to the same punishment, and may be proceeded against in the same  
7 manner and to the same effect, as in civil cases.

SEC. 317.

1 When any judicial officer shall be removed by the senate, on the  
2 recommendation of the governor, he shall by and with the advice and  
3 consent of the senate, appoint some person to discharge the duties of  
4 the office made vacant by such removal.

SEC. 318.

1 When any sheriff, clerk of any county, coroner, district attorney, the  
2 register or clerk of the city and county of New-York shall be removed  
3 by the governor, he shall appoint some person to discharge the duties of  
4 the office made vacant by such removal.

SEC. 319.

1 Whenever during the recess of the legislature, the governor shall have  
2 satisfactory evidence that the treasurer has in any particular violated  
3 his official duty, he may suspend such treasurer from office, and appoint



4 some person to discharge the duties thereof during such suspension;  
5 but every such suspension and the powers of any person appointed to  
6 discharge the duties of such office, shall cease at the end of thirty days  
7 from the commencement of the next session of the legislature.

Const. Art. 6, § 7.

SEC. 320.

1 The governor shall communicate to the legislature, at the commence-  
2 ment of its next session after the suspension of the treasurer, the fact  
3 of such suspension, and the evidence on which it was made; and  
4 thereupon the legislature shall investigate the official conduct of such  
5 treasurer, and within thirty days from the commencement of such ses-  
6 sion, either remove him from office or vacate the order made by the  
7 governor for his suspension; but on the request of such treasurer, the  
8 legislature may extend the time for making any such decision, in which  
9 case, and until such decision shall be made, the person appointed by  
10 the governor for that purpose, shall continue to discharge the duties of  
11 treasurer.

SEC. 321.

1 The secretary of state, comptroller, treasurer, attorney-general, state  
2 engineer and surveyor, canal commissioners, inspectors of state-prisons  
3 and clerk of the court of appeals, for any misconduct or malversation  
4 in office, may be removed from office by concurrent resolution of both  
5 houses of the legislature.

SEC. 322.

1 Before any officer shall, for any malversation or misconduct in office,  
2 be removed by the legislature, he shall be served with a copy of the



3 charges against him and afforded an opportunity of being heard in his  
4 defence.

## SEC. 323.

1 Whenever any person shall be appointed to office by the legislature,  
2 a copy of the resolution by which such appointment is made,  
3 shall be certified by the presiding officers of both houses and their  
4 clerks, and filed in the office of the secretary of state, and another such  
5 copy delivered to the person appointed.

## SEC. 324.

1 Whenever there shall be a failure to elect a person to any office,  
2 proper to be filled at an annual general election, the board of canvas-  
3 sers having power to canvass the votes, and determine upon the elec-  
4 tion to such office, shall make a certificate of such failure; and every  
5 such certificate made by the board of state canvassers, shall be  
6 filed in the office of the secretary of state; and if such failure shall be  
7 to elect any officer proper to be chosen in a county, such certificate shall  
8 be filed in the office of the clerk of such county.

## SEC. 325.

1 The secretary of state, in case of failure to elect any general state  
2 officer, as mentioned in the preceding section, shall transmit to the  
3 body, board or officer having power to appoint a person to fill a vacancy  
4 in the office to which there shall have been a failure to elect, a copy of  
5 the certificate of the board of canvassers declaring such failure; and  
6 in case of failure to elect any officer proper to be chosen in any county,  
7 the clerk thereof shall transmit to the body, board or officer having  
8 power to appoint a person to fill a vacancy in the office to which there  
9 shall have been a failure to elect, a copy of the certificate of the board



10 of canvassers declaring such failure, and another such copy to the  
11 secretary of state.

## SEC. 326.

1 Whenever any officer shall have been removed by the senate, on the  
2 recommendation of the governor, it shall be the duty of the clerk of  
3 the senate immediately to deliver one copy of the resolution of such  
4 removal, certified by him and the president of the senate, to the secre-  
5 tary of state, and another copy thereof to the governor.

## SEC. 327.

1 Whenever any officer is removed by joint resolution of the two houses  
2 of the legislature, it shall be the duty of the clerk of the house in  
3 which such resolution originated, immediately to deliver one copy there-  
4 of, certified by the presiding officers of both houses and their clerks, to  
5 the secretary of state, and another copy to the governor.

## SEC. 328.

1 Whenever any officer shall be removed by the governor, he shall  
2 immediately cause a certificate of such removal signed by him, to be  
3 delivered to the secretary of state, and another like certificate to be de-  
4 livered to the board, body or officer in whom the power of appointment  
5 to the vacant office is vested.

## SEC. 329.

1 Whenever the governor shall receive notice that any public officer  
2 has been convicted of an infamous crime, or whenever he shall declare  
3 any office vacant under the provisions of this title, he shall give notice  
4 of such conviction and of such declaration to the secretary of state,  
5 and to the body, board or officer in whom the power of appointment to  
6 the vacant office is vested.



## SEC. 330.

1 If on the expiration of the term of the incumbent in any elective  
2 office, there shall be no person entitled to such office, or if any person  
3 elected to any such office shall fail or neglect to take or file the oath of  
4 office, or give or renew any official bond as required by law ; the officer  
5 with whom any person if entitled to such office would be required to  
6 file the oath of office or official bond, or with whom any person en-  
7 titled to such office should file such oath or bond, shall give notice of  
8 such failure, or of the fact that no person is entitled to such office to the  
9 body, board or officer in whom the power of appointment to the vacant  
10 office is vested, and if such official oath or bond is required to be, or  
11 should be filed with any other officer than the secretary of state, a like  
12 notice shall be given to the secretary of state.

## SEC. 331.

1 Whenever notice shall be given as required in this chapter, of any  
2 vacancy in office, or the removal of any person from office, it shall be  
3 the duty of the officer giving such notice, to state therein the name of  
4 the officer removed or whose office has become vacant, and the office  
5 held by him and the place if any, in which the duties thereof were to  
6 be performed, and if an elective office, the county or district in which  
7 such officer was elected.

## SEC. 332.

1 Whenever under the provisions of this chapter, notice is required to  
2 be given to the board of county supervisors of any county, by any officer  
3 residing out of such county, such notice shall be sent by mail to the  
4 clerk of such county.



## SEC. 333.

1 When any person shall be removed from, or suspended in office by  
2 the governor or the legislature, the secretary of state shall send a copy  
3 of the order or resolution suspending or removing such officer, to the  
4 clerk of the county where such officer resides; and when directed by  
5 the governor or legislature, the secretary of state shall send a copy of  
6 such order or resolution, to the officer removed or suspended, by a special  
7 messenger or by mail directed to him at his place of residence; and if  
8 so directed, cause a notice of such suspension or removal to be pub-  
9 lished daily for two weeks, in the state paper, which publication shall  
10 be deemed sufficient notice to the persons affected thereby.

## SEC. 334.

1 Whenever a vacancy shall exist in any office, proper to be filled by  
2 the board of supervisors of any county, the clerk of such county shall  
3 cause notice thereof to be served on the clerk of such board, whose  
4 duty it shall be to call a special meeting of such board of supervisors,  
5 to be held not more than fifteen days from the time he shall receive  
6 such notice:

## SEC. 335.

1 If there shall be no clerk of the board of supervisors in the county,  
2 such meeting shall be called by the county clerk, with the same effect  
3 as if called by the clerk of the board of supervisors.

## SEC. 336.

1 The clerk of the board of supervisors, or the clerk of any county,  
2 calling such meeting of the board of supervisors, shall cause written  
3 notice of the time and place designated for the meeting of such board,  
4 to be personally served on the several supervisors of the county, or left



5 at their places of residence, at least eight days before the time appoin-  
6 ted for their meeting.

## SEC. 337.

1 No person appointed to fill a vacancy in any office made elective by  
2 the constitution, except judges of the court of appeals and justices of the  
3 supreme court, shall hold his office by virtue of such appointment longer  
4 than the commencement of the political year, next succeeding the first  
5 annual election after the happening of such vacancy.

Note. The power to remove a public officer, is a delicate trust to be exercised under the highest official responsibility; it may be abused, but the public interests require it to exist in some department of the government. In respect to certain officers, the Constitution has provided for its exercise, in respect to others no provisions are made; a general power, however is vested in the legislature to provide for the removal of all officers except those specially referred to, Const. Art. 10, § See note to Sec. 256, page 67. It is to be inferred from many provisions in the Constitution, that the Legislature was regarded by the convention as the proper depository of this power. By Sec. 7. Art. 5, the governor is authorised to suspend the treasurer during the recess of the legislature, and until thirty days after the commencement of the next session, whenever it shall appear to him that such treasurer has, in any particular violated his duty; but there is no special provision, requiring the legislature to take any action in reference to the treasurer, when thus suspended; but the inference is that the convention anticipated that power to remove all state officers would be conferred upon the legislature.

The grant of power to remove officers, may by fair construction, be held to include a power to suspend them; but an implication arises from the special grant of power to suspend the treasurer, adverse to a right in the legislature to confer the same power in respect to the comptroller and other state officers. Under the former Constitution the treasurer was chosen annually, but no power to remove him was conferred. It was however vested in the governor by law. Sec. 39, Title 6, Ch. 5. Part 1, Rev. St. This power seems inconsistent with that to suspend the treasurer, conferred on him by the Constitution. Authority to remove the comptroller and other state officers, was given by the former Constitution to the legislature. Should it be deemed expedient, and not in conflict with the Constitution to provide for the suspension of the comptroller and other state officers, named in section 321, sections 319 and 320 may be amended so as to include them.

Two justices' of the peace in each county, are members of the court of sessions, and there seems to be an impropriety in vesting that court with authority to remove a majority of its own judges. If the county court should be deemed an unsafe depository of this power, section 312 may be amended by substituting some other court.

We have endeavored to perfect a system for the election and appointment of all civil officers of the state, their resignations, removals and for supplying vacancies, in accordance with the Constitution.



It is provided, Sec. 5, Art. 10, that no person appointed to fill a vacancy in an elective office, shall hold his office by virtue of such appointment, longer than the commencement of the political year, succeeding the first annual election after the happening of the vacancy. If the comptroller should die the day before an election, a person might be appointed to hold that office till the first day of January succeeding; and it has been supposed, that in such case the office could not be supplied thereafter by any new appointment, and that a special election would become necessary. We have been forced to adopt a different conclusion, and have construed the limitation in Article 10, § 5, to apply to the appointed officer and his term of office; that must cease at the specified period, when a new vacancy will arise which may be supplied under the general authority to provide for filling all vacancies, or by some suitable provision of law, which the legislature has power to enact. The language in section 5, Art. 10, includes all officers, but we have been constrained from other provisions to limit its application, as well as that of Sec. 7 of the same article, requiring that provisions shall be made for the removal of all officers. The Constitution contains special provisions for supplying vacancies in certain offices, and for the removal of certain officers. Such cases cannot be regarded as embraced within the general language of these sections; and we have construed them to mean as if they had read as follows: "Provisions shall be made for filling vacancies in office, and for the removal of all officers where no special provisions are made;" and the limitations upon the terms of appointed officers must also, we think, be controlled by other provisions, fixing a different period for the duration of their terms, as in the case of the judges mentioned in the note to Sec. 247.

We have endeavored to avoid special elections. A general state election to supply a vacancy in the office of inspector of state prisons, or canal commissioners or any other state officer, would be attended with heavy expense to the people, and the great number of officers made elective under the Constitution, giving greater probability to the happening of vacancies, seems to require that all special elections, except to supply vacancies in the representation in the legislature, and in Congress, should be avoided. Under the provisions submitted, every such vacancy occurring prior to the fifteenth of October in any year, must be supplied at the next election. Should a vacancy occur after that period and before election, it may be supplied by appointment till the first of January thereafter, when a new vacancy would arise, to which a new appointment may be made; if not made the duties of the office would be discharged under the provisions of section 267.

Under the provisions reported, vacancies in the office of judges, and in the office of state prison inspector are to be supplied by the governor as the Constitution directs, Const. Art. 6, § 13. Art. 5, § 4. In all other elective state officers by the governor, during the recess of the legislature, and by the legislature when in session, giving power to the legislature to remove all officers appointed by the governor during a recess, and to fill a vacancy occasioned by such removal; vacancies in county officers made elective, are to be supplied by the boards of supervisors unless they are occasioned by a removal, see note to Sec. 256.

Provisions are also reported, requiring notice of vacancies in all elective offices, to be given to the secretary of state, and to the body, board or officer authorised to make an appointment to the vacant office, and for convening the boards of supervisors whenever necessary to fill a vacancy.

It is important that a record should be kept of the more important offices, by the secretary of state, and provisions are framed for the purpose of requiring notice of all vacancies and appointments to such offices to be given to him. The importance of having such record kept, is rendered apparent by the provisions in the next chapter requiring him to give notice of all officers to be chosen at the annual elections.



## TITLE 25.

**Proceedings to compel the delivery of Books and Papers, by Public Officers to their Successors.**

SECTION 338. Persons removed from, or going out of office, to deliver over books and papers to their successors.

339. On neglect or refusal so to do, such successor may apply to a justice of the supreme court, &c. for an order to show cause.

340. Proceedings at the time appointed for showing cause. Oath of person charged to be received.

341. If he shall not make oath, and it shall appear that books or papers are withheld, officer shall commit him to jail.

342. Officer may then also issue search warrant.

343. Proceedings on return of search warrant.

344. Upon the death of any officer, the like proceedings may be had against any person into whose hands his books and papers shall come, to compel their delivery.

## SEC. 338.

1 Whenever any person shall be removed from office, or the term for  
2 which he shall have been elected or appointed shall expire, he shall, on  
3 demand, deliver over to his successor all the books and papers in his  
4 custody as such officer, or in any way appertaining to his office. Every  
5 person violating this provision, shall be deemed guilty of a misdemeanor.

## SEC. 339.

1 If any person shall refuse or neglect to deliver over to his successor  
2 any books or papers, as required in the preceding section, such successor  
3 may make complaint thereof to any justice of the supreme court, or any  
4 judge of the county court, where the person so refusing shall reside ;  
5 and if such officer be satisfied by the oath of the complainant, and such  
6 other testimony as shall be offered, that any such books or papers are  
7 withheld, he shall grant an order, directing the person so refusing to  
8 show cause before him, within some short and reasonable time, why he  
9 should not be compelled to deliver the same.



## SEC. 340.

1 At the time so appointed or at any other time to which the matter  
2 may be adjourned, upon due proof being made of the service of the  
3 said order, such officer shall proceed to inquire into the circumstances.  
4 If the person charged with withholding such books or papers, shall  
5 make affidavit before such officer, that he has truly delivered over to  
6 his successor, all such books and papers in his custody or appertaining  
7 to his office, within his knowledge, all further proceedings before such  
8 officer shall cease, and the person complained against shall be discharged.

## SEC. 341.

1 If the person complained against shall not make such oath, and it  
2 shall appear that any such books or papers are withheld, the officer  
3 before whom such proceedings shall be had, shall by warrant commit  
4 the person so withholding, to the jail of the county, there to remain  
5 until he shall deliver such books and papers, or be otherwise discharged  
6 according to law.

## SEC. 342.

1 In the case stated in the last section, if required by the complainant,  
2 such officer shall also issue his warrant directed to any sheriff or consta-  
3 ble, commanding them, in the day time, to search such places as shall  
4 be designated in such warrant, for such books and papers as belonged  
5 to the officer so removed, or whose term of office expired, in his official  
6 capacity, and which appertained to such office, and seize and bring  
7 them before the officer issuing such warrant.

## SEC. 343.

1 Upon any books and papers being brought before such officer, by  
2 virtue of such warrant, he shall inquire and examine whether the same



3 appertain to the office, from which the person so refusing to deliver,  
4 was removed or of which the term expired, and he shall cause the  
5 same to be delivered to the complainant.

## SEC. 344.

1 If any person appointed or elected to any office, shall die, or his  
2 office shall in any way become vacant, and any books or papers belong-  
3 ing or appertaining to such office, shall come to the hands of any per-  
4 son, the successor to such office may, in like manner as herein before  
5 prescribed, demand such books or papers, from the person having the  
6 same in his possession ; and on the same being withheld, an order may  
7 be obtained, and the person charged, may in like manner, make oath  
8 of the delivery of all such books and papers that ever came to his  
9 possession ; and in case of omission to make such oath, and to deliver  
10 up the books and papers, so demanded, such person may be committed  
11 to jail, and a search warrant may be issued, and the property seized by  
12 virtue thereof, may be delivered to the complainant, as herein before  
13 prescribed.



## CHAPTER 4.

### Of Elections, other than for Militia and Town Officers.

- TITLE 26. Of the qualifications, disabilities and privileges of electors.**
27. Of general and special elections, the time and place of holding them, and by whom ordered.
  28. Of the mode of notifying general and special elections.
  29. Of the election in cities and towns; the notice to be given to city and town officers; the formation of election districts, and the election of Inspectors of elections.
  30. Of the formation of boards of inspectors, and the appointment of clerks.
  31. Of the manner of voting and challenges.
  32. Of the duties of boards of Inspectors and clerks of polls.
  33. Of the canvass and estimate of votes by the boards of inspectors.
  34. Of the board of county canvassers and their proceedings.
  35. Of the duty and proceedings of the county clerk.
  36. Of the duties of Secretary of State previous to the making of State canvasses:
  37. Of the formation and proceeding of the board of State canvassers.
  38. Of the duty of Secretary of State, subsequent to the completion of the State canvass.
  39. Of the election of Representatives in Congress.
  40. Of the election of Electors of President and Vice President.
  41. Of the formation and proceedings of the college of electors.
  42. Of the election of Senators in Congress.
  43. Penalties for violating this chapter, and for misconduct at elections.
  44. Miscellaneous provisions.

### TITLE 26.

#### Of the qualifications, disabilities and privileges of electors.

- SECTION 345.** Qualifications of voters except persons of color.
346. Qualifications of persons of color.
  347. Persons in certain cases, not to be deemed to have lost or gained a residence.
  348. Persons convicted of crimes, unless pardoned not to vote.
  349. Infamous crimes defined.
  350. Persons making a bet, or interested in any bet not to vote.
  351. Process in civil cases not to be served on election day.
  352. Certain courts not to be opened on election day, and certain courts not to be held during election
  353. Criminal jurisdiction of magistrates, and other officers not suspended on day of election.

### SEC. 345.

- 1 Every male citizen of the age of twenty-one years, who shall have
- 2 been a citizen for ten days, and an inhabitant of this state one year



3 next preceding any election, and for the last four months a resident of  
 4 the county where he may offer his vote, shall be entitled to vote at such  
 5 election, in the election district of which he shall at the time be a resi-  
 6 dent, and not elsewhere, for all officers that now are or hereafter may be  
 7 elective by the people ; but such citizen shall have been for thirty days  
 8 next preceding the election, a resident of the district from which the  
 9 officer is to be chosen, for whom he offers his vote.

Const., Art. 2, Sec. 1.

Note. To entitle any person to vote, he must be

1. Of the age of twenty-one years,
2. A citizen for ten days, and
3. An inhabitant of the State for one year,
4. For four months a resident of the county in which he offers to vote,
5. A resident for thirty days, next preceding the election, in the district from which the officer is to be chosen for whom he offers his vote.

A want of the qualification of thirty days residence, may exclude an elector from voting for some of the officers to be chosen at an election, although he may be entitled to vote for others.

The citizen may vote in the election district in which he resides, for all officers to be chosen from the district of which he has been a resident thirty days. To entitle him thus to vote, his place of residence and his former residence must have been for that length of time in the same district. Different districts are here described. 1. The election district. 2. The district from which the officer is to be chosen. For the purpose of choosing state officers, and electors of president and vice president, the state is a district. Senate, Assembly, Congressional districts and counties are in the same sense "districts." If an elector has been four months a resident of any county, other than New-York, he has the qualification of thirty days residence in the district for which state officers, senators, county officers and Representatives in Congress are to be chosen ; and if he removes from one assembly district into another, in the same county, within thirty days of an election, he may vote for such officers, but not for member of assembly. In respect to the former he has the requisite qualification of thirty days residence, but has not in respect to the latter. If he remove from one county to another county, both of which are contained within the same senate or congressional district, within four months of an election, he has not the requisite qualification of a four months residence in the county, and therefore cannot vote in the election district where he resides. If an elector removes from one Assembly, Senate or Congressional district, in the city of New-York to another, within thirty days preceding an election, he cannot vote for member of assembly, senator or representative in congress, in the election district into which he removes ; but he may vote for all other officers, he would have been entitled to vote for, in the district from which he removed, as if he had continued to reside therein.



## SEC. 346.

1 No man of color shall vote at any such election, unless he shall have  
2 been for three years a citizen of this state, and for one year next pre-  
3 ceding any election shall have been seised and possessed of a free-  
4 hold estate of the value of two hundred and fifty dollars, over and  
5 above all debts and incumbrances charged thereon, and shall have been  
6 actually rated and paid a tax thereon.

Const., Art. 3, Sec. 1.

## SEC. 347.

1 For the purpose of voting no person shall be deemed to have gained  
2 or lost a residence, by reason of his presence or absence, while employ-  
3 ed in the service of the United States; nor while engaged in the navi-  
4 gation of the waters of this state, or of the United States or of the high  
5 seas; nor while a student of any seminary of learning; nor while kept  
6 at any alms house, or other asylum, at public expense, nor while con-  
7 fined in any public prison.

Const., Art. 3, Sec. 3.

The Constitution would be carried beyond its true meaning, if it was construed to prevent a person while in the service of the United States, or on the high seas, or a student at a seminary from changing his old and acquiring a new residence. It was intended to prevent the mere presence of the persons named from being construed into the evidence of residence. They may however change their actual domicil or residence while in the service of the United States, and while engaged as stated in the Constitution, if they do so with the purpose and intent of abandoning such residence and acquiring a new one. Persons confined in prisons or kept at the public expense in alms houses or asylums, are from their situation, while thus confined, incapable of acquiring a residence, and in such cases their former residences, if they have any, remain.

## SEC. 348.

1 No person who shall have been convicted of bribery, larceny or of  
2 any infamous crime, shall be allowed to vote at any election, unless he  
3 shall have been restored by pardon to all the rights of a citizen.

Const. Art. 3, § 2.



## SEC. 349.

1 The words "any infamous crime," as used in section 348, shall be  
2 deemed to mean crimes punishable by imprisonment in the states  
3 prison.

## SEC. 350.

1 No person, who shall have made or become directly or indirectly in-  
2 terested in any bet or wager, depending upon the result of any election  
3 at which he may offer to vote, or upon the result thereof in any district  
4 or territory in which it may be held, shall be entitled to vote at such  
5 election.

## Const. Sec. 2, Art. 2.

The practice of betting on elections had become a public evil demoralizing and mischievous in its tendency. If it had been intended to disfranchise the person, by reason of any unfitness to exercise the right of voting manifested by the act of betting, the prohibition would have extended to all elections, instead of being confined to the particular one upon which the bet or wager depends.

Betting upon elections produced undue and illegitimate influence and activity, dishonest practices, and extensive frauds in elections, and was resorted to as an indirect method of bribing votes, and thus affected the purity of elections by preventing an honest expression of the popular will.

This provision against betting in the Constitution, brings to the aid of the law the interested vigilance of political partizans, and enlists their selfishness in behalf of the purity of elections. If properly administered it will produce salutary effects.

It is claimed however that wagers, only upon the general result of elections, are intended to be prohibited, and that in a presidential election, a wager on the result in any state; in a state election, a wager on the result in a county, or in a city election, a wager on the result in a ward, are not included within the letter or meaning of the Constitution.

The grant of power to the Legislature, to pass laws depriving persons, making or becoming interested in bets or wagers, of the right of voting, must have that construction which will best enable the Legislature to remedy the mischiefs intended to be reached.

It is obvious that if wagers upon the result of elections in particular districts or territories, in which they may be held are permitted, the purposes for which this grant of power was made will not be accomplished; therefore this section is framed intending to prohibit wagers upon all and every result of an election whether general or local.

The disability to vote, is complete, when the act of making or becoming interested in a wager is done, and the party once disqualified cannot be restored by cancelling the wager or in any other method; the act of betting being considered in the nature of an offence, and the disability to vote the penalty therefor.



## SEC. 351.

1 Whenever an election shall be held pursuant to the provisions of  
2 this chapter, no proceedings by which a civil suit may be commenced,  
3 nor any civil process or proceeding in the nature of civil process, shall  
4 be served on any elector, entitled to vote at such election, on the day  
5 such election is held; but this section shall not prevent the service of  
6 any order or civil process, enjoining or restraining any person from doing  
7 any act injurious to the property or rights of another; nor to prevent  
8 any public officer from seizing or taking possession of any property or  
9 thing whatsoever, by virtue of any order or process commanding him  
10 to make seizure, or take such property or thing into his possession; and  
11 when by law any proceedings are to be had or taken on the service of  
12 such civil process or order, or on such seizure or taking, they may be  
13 had and taken in the same manner, and within the same time as if such  
14 process or order had been served or such seizure made on the day suc-  
15 ceeding such election.

Ch. 130, Laws of 1842.

The citizen should not be prevented from exercising his election franchise, by any proceedings in a civil action for the recovery of a debt; but to secure this right it is not deemed necessary, altogether, to suspend the service of civil process, or to have the law so framed that a person, on election day, may not be prevented from doing acts injurious to the rights or property of others, nor so as to prevent the owner of property, wrongfully taken or withheld from regaining possession on that day, for if such rights were denied, property might, on election day, be removed out of, or concealed in the State, or destroyed. The phraseology of the section has been altered to conform to the mode of commencing suits now prescribed by law.

The provision was originally inserted to prevent arrests on civil process. Since the abolition of imprisonment for debt and arrest on civil process, many of the reasons on which this provision was originally made have ceased to exist, and there seems to be no good reason for not allowing civil suits, in ordinary cases, to be commenced on election days.



## SEC. 352.

1 No court shall be adjourned to open, nor be opened or held to tran-  
2 sact any business on the day any annual general election is held, un-  
3 less for the purpose of receiving a verdict or discharging a jury; and  
4 every adjournment of any court, on the day next preceding the day  
5 any such election shall be held, shall always be to some other day than  
6 the day of such election, except such adjournment as may be made  
7 after a cause is committed to a jury; and no term of the supreme court,  
8 circuit court, court of oyer and terminer or county court, shall be held  
9 during the same week in which any general annual election is held.

The omission to hold a court on the day of election is of little practical utility, for parties, and their witnesses may be obliged to leave their residences two or three days before an election, to be at a circuit or term in some foreign county at the opening of the court on the day after election; and in many cases, were the court to adjourn from Monday preceding, till Wednesday succeeding the election, sufficient time would not be afforded to witnesses, parties and jurors, to go to their homes and vote, and be in attendance on the opening of the court on Wednesday.

## SEC. 353.

1 The jurisdiction and powers, vested by law in any magistrate or  
2 officer, for the preservation of the peace and arresting offenders, shall  
3 not be suspended during any election.



## TITLE 29.

**Of general and special Elections, the time and purpose of holding them, and by whom ordered.**

## SECTION 354. General elections.

355. General election of judges.

356. Special elections.

357. General elections and general election of judges, and special elections, when held.

358. Special elections.

359. Vacancies supplied at general elections.

360. Vacancies not supplied at general elections, how supplied.

361. Term of Senators elected to fill vacancies.

362. Elections to be held for one day.

363. Special elections, how ordered.

364. Proclamation what to specify.

365. Elections to be held in districts.

## SEC. 354.

1 General elections are such as are held at the same time, in every  
2 county, for the election of all or some of the officers to be chosen by  
3 the electors of the whole state, and by electors of counties or districts.

Ch. 340, Laws 1847, Sec. 3.

## SEC. 355.

1 The general elections of judges are held once in every two years, in  
2 all the counties of the state, for the election of judges of the court of  
3 appeals, and justices of the supreme court.

## SEC. 356.

1 Special elections are such as are held only in particular districts or  
2 counties, at a time when no general election is held, for the choice of  
3 representatives in congress, senators and members of assembly.

## SEC. 357.

1 General elections shall be held annually, and the general election of  
2 judges shall be held biennially, on the Tuesday succeeding the first  
3 Monday of November. Special elections at the time and place of which  
4 notice shall have been given.



## SEC. 358.

1 Special elections shall be held as follows :

2 1. When a representative in congress, senator or member of assem-  
3 bly, proper to be chosen at an annual general election, shall not have  
4 been chosen by reason of two or more candidates having received an  
5 equal, and the highest number of votes for the same office.

6 2. Whenever any person elected to the office of representative in  
7 congress, senator or member of assembly shall die, or his right to such  
8 office shall cease, before the commencement of the term for which he  
9 shall have been elected.

10 3. Whenever a vacancy occurs in the office of any senator or mem-  
11 ber of assembly, after the last day of December in any year, and be-  
12 fore the first day of March thereafter.

13 4. Whenever, in case of an extra session of the legislature a vacancy  
14 in the office of senator, or members of assembly shall occur, between  
15 the first day of April, and ten days before the time appointed for such  
16 extra session.

17 5. Whenever a vacancy occurs in the office of representative in con-  
18 gress, prior to the commencement of the first session of any congress ;  
19 or during the first ninety days of such session, which shall not have  
20 been supplied at a general election.

## SEC. 359.

1 Senators shall be chosen in the several senate, and members of the  
2 assembly in the several assembly districts, at the annual general elec-  
3 tions, to supply vacancies as follows :

4 1. When a vacancy in the office of senator shall not have been sup-  
5 plied at a special election, unless the term of the senator whose office  
6 becomes vacant, would have expired on the commencement of the  
7 political year succeeding such election ; but.



8     2. In case an extra session of the legislature shall have been ordered  
9     before any annual general election, if at the time of holding such elec-  
10    tion the office of senator or member of assembly in any district shall be  
11    vacant, such vacancy shall be supplied thereat, although the term of the  
12    senator in such vacant office, would have expired on the commence-  
13    ment of the political year, next succeeding such election.

See notes to Title 24.

#### SEC. 360.

1     If a vacancy in any office proper to be supplied at any annual gener-  
2     al election, or at a general election of judges, shall not have been sup-  
3     plied thereat, it may be so supplied, if such vacancy continues to exist,  
4     at the next annual general election thereafter.

A vacancy in the office of judge of the court of appeals, or justice of the supreme court is required to be filled, at the first general election of judges, by the Constitution, and by provisions of Title 17; but if there should be an omission to supply such vacancy when it ought to be supplied, under the requirements of the Constitution, it is proper for the legislature to provide that it be done, at any subsequent election.

#### SEC. 361.

1     A person elected to supply a vacancy in the office of senator, shall  
2     enter upon the duties of such office, on being declared elected and  
3     hold the same, till the expiration of the term in which the vacancy  
4     happened.

#### SEC. 362.

1     Annual general elections, and the general election of judges, and  
2     special elections shall be held for one day only.

#### SEC. 363.

1     Special elections, in case of failure to elect by reason of two or more  
2     persons, having an equality of votes shall be ordered by the board of



3 canvassers, having the power to determine on the election of the officer  
4 omitted to be chosen; and in all other cases, such election shall be  
5 ordered by the governor, who shall issue his proclamation therefor.

SEC. 364.

1 Such proclamation shall specify the county or district in which such  
2 special election is to be held; the cause of such election; the name of  
3 the officer in whose office the vacancy has occurred; the time when  
4 his term of office will expire; and the day on which such election is to  
5 be held, which shall not be less than twenty nor more than forty days  
6 from the date of the proclamation.

SEC. 365.

1 The elections in the several cities and towns shall be by election  
2 districts.

TITLE 28.

**The mode of notifying general and special Elections.**

- SECTION 366. Notice of election of judges of the court of appeals and justice of the Supreme Court.  
367. Notice of elections to supply vacancies in the office of judge of the court of appeals and justice of the Supreme Court.  
368, to 371. Notice by the Secretary of State, of the election for state, county and other officers for the full term, and for supplying vacancies.  
372. Notice to be directed to first judge of the court of common pleas, of the city and county of New-York, and his duty.  
363 Special elections ordered by the Governor, and notice thereof, how given.  
374. Notice and proclamation to be published in state paper.  
375. When special elections ordered by the boards of canvassers notice, how given.

SEC. 366.

1 The secretary of state once in every two years, between the first days  
2 of July and September, immediately preceding the expiration of the  
3 term of office of any judge of the court of appeals, and of any justice  
4 of the supreme court, shall direct and cause notice in writing to be  
5 given as follows:



6 1. To the sheriff, clerk or county judge of each county, that at the  
7 next general election of judges, a judge of the court of appeals is to be  
8 chosen.

9 2. To the sheriff, clerk or county judge in the several counties of  
10 each judicial district, that a justice of the supreme court is to be chosen  
11 therein at the next general election of judges.

## SEC. 367.

1 If a vacancy exists in the office of judge of the court of appeals, or  
2 justice of the supreme court in any judicial district, proper to be supplied  
3 at the next general election of judges, or annual election, the secretary  
4 of state shall, between the first day of July and the fifteenth day of  
5 October, previous to such election, direct and cause notice in writing to  
6 be given as follows :

7 1. To the sheriff, clerk or county judge of each county, that at the  
8 next general election of judges, or annual election, a judge of the court  
9 of appeals, to supply a vacancy in that office, is to be chosen ; stating  
10 in such notice the name of the former incumbent in the vacant office,  
11 and the period when his term of office would have expired.

12 2. To the sheriff, clerk or county judge in the several counties com-  
13 posing the judicial district, that a justice of the supreme court, to sup-  
14 ply a vacancy in the office of justice of the supreme court in such dis-  
15 trict, is to be chosen at the next general election of judges, or annual  
16 election ; stating in such notice the name of the former incumbent in  
17 the vacant office, and the period when his term of office would have  
18 expired.

## SEC. 368.

1 Between the first days of July and September in each year, the sec-  
2 retary of state shall direct and cause to be delivered to the sheriff, clerk



3 or county judge of each county, a notice in writing specifying the offi-  
4 cers to be chosen by the electors of the state, and by the electors of the  
5 county, to the officers of which such notice shall be addressed, or by  
6 the electors of any district in such county, or by any district of which  
7 such county is a part, by reason of the term of any office expiring at  
8 the end of the political year in which such election is to be held.

## SEC. 369.

1 If a vacancy exists in any office to which any person has been chosen  
2 by the electors of the state, proper to be supplied at the next annual  
3 general election, the secretary of state, shall between the first days of  
4 July and the fifteenth day of October, previous to such election, direct  
5 and cause to be delivered to the sheriff, clerk or county judge of each  
6 county, a notice in writing, specifying the cause of such vacancy, the  
7 office in which it occurred and the time when the term of the incum-  
8 bent therein would have expired, and that at the next general annual  
9 election, a person is required to be chosen to the vacant office, for the  
10 full term or for the residue of the unexpired term thereof.

## SEC. 370.

1 If a vacancy exists in any office in any county, proper to be supplied  
2 by the electors thereof, or the electors of any district thereof, at the en-  
3 suing annual general election, the secretary of state shall, between the  
4 first days of July and the twentieth day of October, previous to such  
5 election, direct and cause to be delivered to the sheriff, clerk or county  
6 judge of every county, in which any such vacancy exists, a notice in  
7 writing specifying the cause of such vacancy, the office in which it  
8 occurred, and the time when the term of the incumbent would have  
9 expired, and that at the next annual general election, a person is to be  
10 chosen for the full term or for the residue of the unexpired term thereof.



## SEC. 371.

1 If a vacancy exists in the office of senator or representative in con-  
2 gress, proper to be supplied by the electors of any senate or congress  
3 district at the ensuing annual general election, the secretary of state  
4 shall, between the first days of July and the twentieth day of October,  
5 direct and cause to be delivered to the sheriff, clerk or county judge of  
6 the county in which such senate or congress district is situated, or to  
7 the sheriff, county clerk or county judge of the several counties com-  
8 posing such district, a notice in writing specifying the cause of such  
9 vacancy and the office in which it happened, and when the term of the  
10 incumbent therein would have expired, and that at the next annual  
11 general election a person is to be chosen to fill such vacancy.

## SEC. 372.

1 Every notice which would, by the terms of this title, be required to be  
2 served on the county judge of the city and county of New-York, shall  
3 be served upon the first judge of the court of common pleas of the  
4 said city and county, whose duties in respect thereto, shall be the same  
5 as in this chapter is required of the county judges in the several counties.

## SEC. 373.

1 When a special election shall have been ordered by the governor in a  
2 county, or assembly district in any county, the secretary of state shall  
3 forthwith cause a copy of the governor's proclamation to be delivered  
4 to the sheriff, clerk, or county judge of such county; and when order-  
5 ed in any senate or congress district, to the sheriff, clerk or county judge  
6 of each county therein.



## SEC. 374.

1 The secretary of state shall cause a copy of each notice issued by  
2 him, and of such proclamation of the governor, to be published in the  
3 state paper, once in each week, from the date of such notice or procla-  
4 mation, until the election to which it shall refer.

## SEC. 375.

1 When a special election shall be necessary, in case of an equality of  
2 votes, provided for in Title 28 of this chapter, the board of canvassers,  
3 having power to determine on the election of the officer omitted to be  
4 chosen, shall without delay, direct and cause to be delivered to the  
5 sheriff, clerk or county judge of each county in the district, or of the  
6 county in which such election is to be held, a notice specifying the  
7 officer to be chosen; the time for which he is to be chosen, and the  
8 day on which such election is to be held; which day shall not be less  
9 than twenty nor more than forty days from the date of such notice.  
10 The notice of such an election, if ordered by the board of state can-  
11 vassers shall be signed by the secretary of state, and if ordered by the  
12 county canvassers, by the chairman and clerk of the board.



## TITLE 29.

**Of the existing election districts, their alteration, election of Inspectors, and notices of elections.**

SECTION 376. Existing election districts, to continue.

377, 378. When wards to be divided, and new election districts formed.

379. When towns to be divided and new election districts formed, and notice how given.

380. Election districts to consist of contiguous territory, and to contain an equal number of voters.

381. Notice of division of wards, and description of districts, how given.

382. Notice of place of holding elections, how given.

383. Inspectors, how chosen.

384. Vacancies in the office of Inspectors, how filled.

385, 386, 387. Inspectors, how appointed for new towns and wards, and newly created election districts.

388. Compensation of inspectors.

389. Towns and wards not divided to constitute one election district.

390. Sheriffs &c, to give notice to supervisors, assessors and Mayors of cities.

## SEC. 376.

1 The existing election districts in the wards of the several cities and  
2 towns, for holding all general and special elections, shall continue un-  
3 til changed, as in this title provided.

## SEC. 377.

1 Whenever it shall be ascertained that any ward in any city, constitut-  
2 ing an election district, contains more than eight hundred voters, the  
3 common council of such city, shall on or before the first Monday of  
4 October thereafter, divide the same into two or more election districts.

## SEC. 378.

1 The common council of each city may, on or before the first Monday  
2 of October in every year, reapportion the election districts, in the several  
3 wards thereof, and divide the same into new election districts; but no  
4 election district in any ward, shall contain more than eight hundred,  
5 nor less than four hundred electors

## SEC. 379.

1 The supervisors, assessors and town clerk of each town, now or here-  
2 after to be created, shall on the first Monday of October, in every year,



3 at ten o'clock in the forenoon, meet at the town clerk's office, in such  
4 town and form a board; and if such town has not already been divided  
5 into election districts, they may divide the same into a convenient num-  
6 ber of such districts; and they shall divide each town into such dis-  
7 tricts, if it contains over five hundred voters; and whenever any election  
8 district in any town contains more than five hundred voters, they shall  
9 reapportion and redivide such town into new election districts, so that  
10 no one district thereof shall contain more than five hundred voters.  
11 They shall make a certificate of such division, under their hands, in  
12 which such districts shall be numbered and described by known boun-  
13 daries, which shall be immediately filed in the office of the town clerk.  
14 The town clerk shall, within ten days after such meeting, and at least  
15 two weeks before the day of election, put up copies of the said cer-  
16 tificates in at least four public places in each of the said districts; and he  
17 shall deliver a copy thereof to an inspector in each district before the  
18 day of election.

## SEC. 380.

1 The election districts into which any town or ward may be divided,  
2 shall consist of contiguous territory, and contain, as nearly as may be,  
3 an equal number of voters.

## SEC. 381.

1 Whenever a ward shall be divided into two or more districts, or the  
2 election districts in any ward shall be altered, such districts shall be  
3 numbered and described by known boundaries, and the common council  
4 shall immediately publish the same, by making a map and description of  
5 such division, and keeping such map and description open for public  
6 inspection in the office of the clerk of such city, and also by posting  
7 up copies of such map and description in at least ten of the most



8 public places in each district of such ward; and the common council  
9 shall, also, prior to every election, furnish copies of such map and de-  
10 scription to the inspectors of election in each district of such ward.

## SEC. 382.

1 The common council of each city, and the supervisor, assessors and  
2 town clerk of each town, on the first Monday in October in each year,  
3 shall designate the place in each election district, in such city or town,  
4 at which elections shall be held during the year; and they shall there-  
5 upon give notice, written or printed, to be posted in at least eight public  
6 places in each election district, containing a description of the place so  
7 designated, and of the time of opening and closing the polls.

## SEC. 383.

1 At each town meeting held in the several towns of this State, and at  
2 each annual charter election held in the several cities of this State,  
3 which are not organized into towns, the electors of such city or town  
4 shall be entitled to vote by ballot, on the same ticket with other town  
5 or charter officers, for two electors residing in each election district of  
6 such town or city, to be inspectors of election for such city or town;  
7 and the two persons in each district receiving the greatest number of  
8 votes, shall be two of the inspectors of election for such district at all  
9 elections to be held therein during the ensuing year. The presiding  
10 officers of such town meeting or charter election, shall, immediately  
11 after the votes of such town meeting or charter election shall be can-  
12 vassed, appoint by writing, subscribed by a majority of said presiding  
13 officers, another inspector of elections for each election district, to be  
14 associated with said two inspectors so elected, and who shall thereupon  
15 be one of the inspectors of election of such district. Such inspector



16 shall be selected from the two persons in such election district who  
17 shall have the highest number of votes next to the two inspectors so  
18 elected. And no ballot for inspectors shall be counted on which more  
19 than two names are contained. A certificate of every such appoint-  
20 ment in a town, shall be filed with the town clerk, and in a city with  
21 the clerk of the common council thereof.

## SEC. 384.

1 In case any such inspectors in any town shall not be chosen or ap-  
2 pointed, as provided for in the preceding section, or any of them shall  
3 be absent, or shall have ceased to be a resident of such district, or un-  
4 able to attend and hold any election in their district, the supervisor,  
5 town clerk and justices of the peace in such town, shall meet at such  
6 time and place as shall be appointed by the supervisor, or in case of his  
7 absence or inability, or a vacancy in his office, by the town clerk, and  
8 shall designate and appoint so many electors of such election district,  
9 as shall be necessary to supply such vacancy, to be inspectors of elec-  
10 tion for such district, and shall file a certificate of such appointment in  
11 the office of the town clerk; and the persons thus appointed shall be  
12 inspectors of such election for such district. If any vacancy in the office  
13 of inspector of elections in any election district of a city, shall exist,  
14 an elector of such district shall, by the common council of such city, be  
15 appointed to that office.

## SEC. 385.

1 Upon the erection of a new town, or the creation of a new election  
2 district in any town, if there are no inspectors of election therein, it  
3 shall be the duty of the board creating or authorized to create such  
4 new election district, in any such town, at the time appointed in this



5 title for the meeting of such board, to assign at least three of their  
6 number to hold the election in each district, and if there be not a suf-  
7 ficient number for that purpose, they shall assign one or more of their  
8 number to each district, and shall select from among the justices of the  
9 peace, the commissioners of common schools and the commissioners  
10 of highways of such town, as many as shall be necessary, in addition  
11 to those previously assigned, to constitute at least three inspectors of  
12 election for each district; and such inspectors shall be allowed to vote  
13 in the district where they shall be respectively assigned. The selec-  
14 tions shall be made from the officers aforesaid, in the order herein  
15 named, residing in the district to which they shall be assigned, if there  
16 be sufficient for the purpose. A certificate specifying the officers thus  
17 assigned and selected for each district, shall at the same time be signed  
18 by the board, and filed in the office of the town clerk, who shall imme-  
19 diately cause notice thereof to be given to the officers selected. And  
20 in case a majority of said town officers, shall for any cause fail to at-  
21 tend for the purposes aforesaid, on the days above mentioned, the same  
22 powers are given in relation to adjournments; and the same duties are  
23 required in all particulars as are given in this title to town officers, ex-  
24 cept that no adjournments shall extend beyond the fifteenth day of  
25 October in each year.

## SEC. 386.

1 Upon the erection of a new ward, or of a new election district in any  
2 ward, if there are no inspectors of election therein, it shall be the duty  
3 of the common council of the city, in which such new ward or new  
4 election district is erected, at least ten days before the annual general  
5 election, to appoint three inspectors of elections for each newly created  
6 ward or election district, and who shall be electors within the ward or  
7 district for which they may be appointed.



## SEC. 387.

1 Upon the division of any town or ward into two or more election dis-  
2 tricts, or upon the re-division of any town or ward into new election  
3 districts, there shall be resident in any such newly created or arranged  
4 district, one or more inspectors of election, duly elected at the preced-  
5 ing town or charter election; they shall be inspectors of such district,  
6 and in such case no more inspectors shall be appointed or designated  
7 for such district than sufficient to make three inspectors therein.

## SEC. 388.

1 The inspectors assigned, elected, designated or appointed as herein  
2 prescribed, shall receive the compensation provided by law for inspectors  
3 of elections in towns or wards.

## SEC. 389.

1 Every town or ward that shall not be divided into election districts  
2 according to the preceding provisions, shall constitute and be an elec-  
3 tion district in itself; and all the provisions of this act in relation to  
4 election districts, the election or appointment of inspectors of election  
5 therein, and their duties and powers, shall apply to such towns or wards  
6 and the inspectors of elections therein.

## SEC. 390.

1 The sheriff, clerk or county judge of each county, who shall receive  
2 a notice of an election, shall without delay, deliver a copy of such  
3 notice to the supervisor or assessor of each town in his county, and to  
4 the mayor of each city in his county. He shall also cause a copy of  
5 such notice to be published in all the public newspapers in his county,  
6 once in each week until the election therein specified; if there be none  
7 printed in his county, then in some newspaper printed in an adjoining  
8 county.



## TITLE 30.

**Of the formation of boards of inspectors and the appointment of clerks.**

SECTION 391. Inspectors to meet and form a board.

392. And appoint a chairman.

393. And clerk.

394. And take the oath of office.

395. And open the polls and make proclamation thereof.

396. How long kept open.

## SEC. 391.

1 The inspectors of each election district shall meet at the time and  
2 place, when and where an election shall have been appointed to be held  
3 therein, and shall proceed to organize themselves as a board, for the  
4 purpose of presiding at and conducting such election.

## SEC. 392.

1 The inspectors shall appoint one of their number chairman of the  
2 board, who shall administer to the other inspectors the oath of office, as  
3 prescribed by the constitution, and the same oath shall then be admin-  
4 istered to the chairman by one of the other inspectors.

## SEC. 393.

1 The inspectors, or a majority of them, having severally taken such  
2 oath, the board shall then appoint two clerks, to be called clerks of the  
3 poll.

## SEC. 394.

1 The clerks shall each take the constitutional oath of office, which  
2 shall be administered to them by the chairman of the board.

## SEC. 395.

1 The poll of each election shall then be opened, and proclamation  
2 thereof made, and of the time when the same will be closed.



## SEC. 396.

1 The poll in the several cities shall be opened at sunrise, and in the  
2 several towns at any time between sunrise and nine o'clock in the  
3 morning, and shall be kept open till the setting of the sun; and no ad-  
4 journment or intermission whatever shall take place until the same be  
5 closed.

## TITLE 31.

**Of the manner of voting and of challenges.**

SECTION 397. Electors to vote by ballot.

398. Form and contents of ballot.

399. Description of ballots.

400. Challenge, preliminary.

401. Persons challenged to be interrogated.

402. When vote to be rejected.

403. Oath to be taken if challenge not withdrawn.

404. Form of oath to be taken by colored person.

405. If oath not taken, vote to be rejected.

406. Form of oath to be taken by inspector in certain cases.

407. Name of person challenged, and the oath taken, to be noted in the minutes of the board.

408. Persons challenged as convicts not to answer. Convicts voting, to be convicted and imprisoned.

## SEC. 397.

1 The electors shall vote by ballot; and each person offering to vote,  
2 shall deliver his ballot, so folded as to conceal the contents, to one of  
3 the inspectors, in the presence of the board.

## SEC. 398.

1 The ballot shall be a paper ticket, which shall contain written or  
2 printed, or partly written and partly printed, the names of the persons  
3 for whom the elector intends to vote, and shall designate the office to  
4 which each person, so named, is intended by him to be chosen; but no  
5 ballot shall contain a greater number of names of persons as designated  
6 to any office, than there are persons to be chosen at the election to fill  
7 such office.



## SEC. 399.

1 Except as otherwise provided in the subsequent subdivisions of this  
2 section, the ballots shall contain as follows:

3 1. The names of all the persons voted for by any elector at any elec-  
4 tion, excepting electors of president and vice president, judges of the  
5 court of appeals, justices of the supreme court, county judges, separate  
6 officers to perform the duties of the office of surrogate and local officers  
7 to discharge the duties of county judge and surrogate, shall be upon one  
8 ballot, which ballot shall be endorsed "State," and the names of all the  
9 persons voted for by any elector at any election for judges of the court  
10 of appeals, justices of the supreme court, county judges, separate officers  
11 to perform the duties of the office of surrogate and local officers to dis-  
12 charge the duties of county judge and surrogate, shall be upon one bal-  
13 lot, which ballot shall be endorsed "judiciary."

14 2. In counties entitled to more than one member of assembly, the  
15 name of the person voted for by any elector for member of assembly,  
16 at any election, shall be upon a separate ballot and endorsed "Assem-  
17 bly."

18 3. In the city and county of New-York, the names of all persons  
19 voted for by any elector for senator, at any election, shall be upon a  
20 separate ballot, and endorsed "Senate."

21 4. In the city and county of New-York, and in the county of Hamil-  
22 ton, the names of all the persons voted for by any elector for represen-  
23 tative in congress at any election shall be upon a separate ballot, and  
24 endorsed "Congress."

25 5. When electors of president and vice president are to be chosen, a  
26 separate ballot shall be given for them, which shall be endorsed "Elec-  
27 tors," and shall contain the names of the persons designated by the voter



28 giving the same, to be electors of president and vice president, or any  
29 of them.

30 6. If at a general election there be one or more vacancies to be sup-  
31 plied in the office of judge of the court of appeals, justice of the supreme  
32 court, canal commissioner, or inspector of state prisons, and at the same  
33 election, one is to be elected to the same office for a full term, the term  
34 for which the person voted for is intended, shall be designated on the  
35 ballot.

36 7. If at a general election for representatives in congress, any person  
37 named in a congress ballot, shall be intended to supply a vacancy in the  
38 office of such representative, the ballots shall designate the congress for  
39 which each person is intended to be chosen.

#### SEC. 400.

1 If any person offering to vote at any election shall be challenged in  
2 relation to his right to vote at that election, by an inspector, or by any  
3 other person entitled to vote at the same poll, one of the inspectors shall  
4 tender to him the following preliminary oath: "You do swear (or affirm)  
5 that you will fully and truly answer all such questions as shall be put  
6 to you, touching your place of residence and qualification as an elector."

#### SEC. 401.

1 The inspectors or one of them shall then proceed to question the per-  
2 son challenged in relation to his name; his then place of residence;  
3 how long he has resided in the town or ward where the vote is offered;  
4 what was the last place of his residence before he came into that town  
5 or ward, and also as to his citizenship, and whether a native or natura-  
6 lized citizen, and if the latter, when, where, and in what court, or be-  
7 fore what officer he was naturalized; whether he came into the town



8 or ward for the purpose of voting at that election; how long he con-  
9 templates residing in the town or ward; and whether he has made any  
10 bet or wager, or been at any time, directly or indirectly interested in  
11 any bet or wager, depending upon the result of the election at which  
12 he offers to vote. If the person challenged offers to vote for any other  
13 officer to be chosen at such election, than member of assembly, he  
14 shall be interrogated as to his residence in the district from which such  
15 officer is to be chosen, and to all such other matters, as may tend to  
16 test his qualifications as to residence in the town, ward or district, citizen-  
17 ship, and right to vote at that poll.

## SEC. 402.

1 If any person shall refuse to take the said preliminary oath when  
2 so tendered, or to answer fully any questions which shall be so put to  
3 him, or if from his answers it shall appear he has not the requisite  
4 qualifications to vote for any, or all of the officers for whom he offers to  
5 vote, his vote for all, or such of the officers as it shall appear he is not  
6 entitled to vote for, shall be rejected.

NOTE. If a person offering to vote shall, by his answers on oath, show that he is not entitled, to allow him to take the general oath and then vote would be an act of injustice towards him. It would invite perjury and be a fraud upon the qualified voter and the public. If in the exercise of an honest judgment and ordinary intelligence, inspectors of elections are unable to decide upon the qualifications of voters, from their own statement of facts, the elective franchise is insufficiently guarded. The Constitution requires that "laws shall be made for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established," Const. Art. 2, § 4, and when it is ascertained, through the operation of such laws, that an individual offering to vote, has not this right, it would be doing violence to the spirit and letter of the Constitution, to allow him to exercise it, even at the expense of committing perjury. The voter is allowed to give evidence in his own case as to his qualifications, and if the boards of inspectors cannot be trusted to determine the question of qualification, we see no good reason for allowing the evidence to be adduced before them. For any corrupt decision or wilful denial of the right to vote, they are answerable in a civil action to respond in damages, and liable to be indicted for a misdemeanor.



## SEC. 403.

1 If the inspectors shall decide that the person whose right to vote is  
2 challenged is qualified, and the challenge shall not be withdrawn, one  
3 of the inspectors shall then administer to him the following oath:  
4 "You do swear (or affirm as the case may be,) that you have been a  
5 citizen of the United States for ten days, and are now of the age of  
6 twenty-one years, that you have been an inhabitant of this State for  
7 one year next preceding this election, and for the last four months a  
8 resident of this county; that you have been for thirty days next pre-  
9 ceding this election a resident of this assembly district, (or senate or  
10 congressional district or districts, ward, town, village or city, as the case  
11 may be, naming any or all of the foregoing districts, ward, town, vil-  
12 lage or city from which the officer is to be chosen for whom said per-  
13 son offers to vote;) that you are now a resident of this town, (or ward  
14 as the case may be,) and of the election district in which you now offer  
15 to vote, and that you have not made any bet or wager, and are not and  
16 have not been directly or indirectly interested in any bet or wager, de-  
17 pending upon the result of this election, or upon the result thereof, in  
18 any district or territory in which it may be held, and that you have not  
19 voted at this election."

## SEC. 404.

1 If the person so offering to vote be a colored man, the following oath  
2 shall be tendered to him: "You do swear (or affirm,) that you are of  
3 the age of twenty-one years; that for three years you have been a citi-  
4 zen of this State, that you have been an inhabitant of this State for one  
5 year next preceding this election, and during that time have been, and  
6 that you now are, seised and possessed of a freehold estate of the value  
7 of two hundred and fifty dollars, over and above all debts and incum-



8 brances charged thereon, and have been actually rated and paid a tax  
9 thereon; and that you have been for the last four months a resident of  
10 this county; that you have been for the last thirty days next preceding  
11 this election a resident of this assembly district, (or senate or congress-  
12 sional district or districts, ward, town, village or city, as the case may  
13 be, naming any or all of the foregoing districts, ward, town, village or  
14 city from which the officer is to be chosen for whom said person offers  
15 to vote;) that you are now a resident of this town, (or ward, as the  
16 case may be,) and of the election district in which you now offer to  
17 vote, and that you have not made any bet or wager, and are not, and  
18 have not been directly or indirectly interested in any bet or wager de-  
19 pending upon the result of this election, or upon the result thereof, in  
20 any district or territory in which it may be held, and that you have not  
21 voted at this election."

## SEC. 405.

1 If any person shall refuse to take the oath so tendered, his vote shall  
2 be rejected.

## SEC. 406.

1 No inspector of election in any other election district than that in  
2 which he resides, if challenged shall be required in the oath ad-  
3 ministered to him, to state that he is a resident of the district in which  
4 he offers to vote, if such vote is offered in the election district for which  
5 he shall have been appointed, and every inspector of elections, shall be  
6 entitled to vote, if otherwise qualified at the polls of which he is in-  
7 spector.



## SEC. 407.

1 The inspectors of election shall keep a minute of their proceedings,  
2 in respect to the challenging and administering oaths to persons offering  
3 to vote, in which shall be entered, by one of them, the name of every  
4 person who shall have taken the oaths prescribed by this act, or either  
5 of them, specifying in each case whether the preliminary oath, or the  
6 general oath, or both, were taken; which minute and statement shall  
7 be certified by such inspectors, and returned by them to the office at  
8 which their return of votes given at such election is made, and at the  
9 same time, and shall there be filed. The inspectors shall also direct the  
10 clerks of the polls to designate by some appropriate mark, opposite to  
11 his name, every person entered on said list, who shall have taken the  
12 said oaths, or either of them.

## SEC. 408.

1 If the person be challenged as convicted of an infamous crime, he  
2 shall not be required to answer any questions in relation to such alleged  
3 conviction; nor shall any proof of such conviction be received, other  
4 than a duly authenticated record thereof; but if any person so convict-  
5 ed shall vote at any such election, unless he shall have been pardoned  
6 and restored to all the rights of a citizen, he shall be deemed guilty of  
7 a misdemeanor, and on conviction shall be imprisoned in the county  
8 jail for the term of six months.



## TITLE 32.

**Of the duties of the board of Inspectors, and Clerk of the poll.**

- SECTION 409. Ballot boxes to be procured and designated.  
410. Ballot boxes to be provided with keys, and kept locked.  
411. Opening in ballot boxes, for ballots  
412. Ballots deposited in appropriate box.  
413. Poll list to be kept by clerks, and manner of keeping.  
414. Duty of Inspectors to challenge voters.  
415. Authority of boards to preserve the peace.  
416. May commit to prison, persons disobeying order.  
417. Duties of sheriff.

## SEC. 409.

1 Boxes for the reception of ballots, shall be provided by the inspectors  
2 of each election district; one of such boxes shall be marked "State,"  
3 in which all ballots required to be marked "State" shall be deposited;  
4 one of such boxes shall be marked "judiciary," in which all ballots re-  
5 quired to be endorsed "judiciary" shall be deposited; one of such boxes  
6 shall be marked "electors," in which all ballots required to be marked  
7 "electors" shall be deposited; and when the ballots for members of  
8 assembly, senators, or representatives in congress are required to be  
9 separate, one of such boxes shall be marked "assembly," in which all  
10 votes required to be marked "assembly" shall be deposited; one of  
11 such boxes shall be marked "senate," in which all ballots required to  
12 be marked "senate" shall be deposited; one of such boxes shall be  
13 marked "Congress," in which all ballots required to be marked "Con-  
14 gress" shall also be deposited; when amendments of the constitution  
15 are proposed a separate box shall be procured and marked "Constitu-  
16 tion," in which shall be deposited the ballots for or against such  
17 amendments.



## SEC. 410.

1 Each box shall be provided with sufficient lock, and shall be locked  
2 before the opening of the poll, and the keys thereof delivered to one of  
3 the inspectors, to be appointed by the board, and shall not be opened  
4 during the election, except in the manner and for the purposes herein-  
5 after mentioned.

## SEC. 411.

1 An opening shall be made in the lid of each box, not larger than  
2 shall be sufficient for a single closed ballot to be inserted therein at one  
3 time, through which each ballot received, proper to be placed in such  
4 box, shall be inserted.

## SEC. 412.

1 When the board shall have finally received the ballot of an elector,  
2 one of the inspectors, without opening the same, or permitting it to be  
3 opened or examined, shall deposit it in the box corresponding in title  
4 with the endorsement of the ballot.

## SEC. 413.

1 Each clerk of the poll shall keep a poll list, which shall contain one  
2 column headed "names of voters," and so many additional columns as  
3 there are boxes kept at the election. The heading of each additional  
4 column shall correspond with the name of one of the boxes so kept:  
5 the name of each elector voting shall be entered by each clerk in the  
6 column of his poll list, headed "names of voters;" and when there  
7 shall be more than one box kept, opposite such name shall be written  
8 the figure 1, in each remaining column of such poll list, corresponding  
9 in its heading with the name of a box in which a ballot of the elector  
10 shall have been deposited.



## SEC. 414.

1 It shall be the duty of each inspector to challenge every person offer-  
2 ing to vote, whom he shall know or suspect not to be duly qualified as  
3 an elector.

## SEC. 415.

1 The board of inspectors shall possess full authority to maintain regu-  
2 larity and order, and to enforce obedience to their lawful commands,  
3 during an election, and during the canvass and estimate of votes, after  
4 the closing of the poll; and shall have full authority to preserve peace  
5 and good order at and around the polls of the election, and to keep the  
6 access thereto open and unobstructed; and may appoint one or more  
7 electors to communicate their orders and directions, and to assist in the  
8 performance of the duties in this section enjoined.

## SEC. 416.

1 If any person shall refuse to obey the lawful command of the in-  
2 spectors, or by disorderly conduct in their presence or hearing, shall in-  
3 terrupt or disturb their proceedings, they may make an order directing  
4 the sheriff, or any constable of the county, to take the person so offend-  
5 ing into custody, and detain him until the final canvass of the votes  
6 shall be completed; but such order shall not prohibit the person so  
7 taken into custody from voting at such election.

## SEC. 417.

1 Such order shall be executed by any sheriff or constable, to whom  
2 the same shall be delivered; or if none shall be present, by any other  
3 person deputed by such board in writing.



## TITLE 33.

**Of the canvass and estimate of votes by the board of inspectors.**

- SECTION 418 Canvass to be public, and commence on closing the polls, and not adjourned.  
419. Poll list to be compared and corrected.  
420. Ballots to be counted unopened.  
421. Ballots found in wrong box, not to be rejected in certain cases.  
422. Excess of ballots to be destroyed.  
423. Votes to be estimated and canvassed.  
424. Excess of ballots to be destroyed.  
425. Statement of result to be, and how made.  
426. Canvass and statement of votes, for President and Vice President.  
427. Form of statement, and certificate of canvassers.  
428. Copies to be filed, and where.  
429. Poll lists to be filed, and where.  
430. Ballots to be destroyed.  
431. Original statement of canvassers to be delivered to supervisor, or assessor.

## SEC. 418.

1 As soon as the poll of an election shall have been finally closed, the  
2 inspectors of the said election in their several districts, shall proceed to  
3 canvass the votes. Such canvass shall be public, and shall not be ad-  
4 journed or postponed until it shall have been fully completed.

## SEC. 419.

1 The canvass shall commence by a comparison of the poll lists from  
2 the commencement, and a correction of any mistakes that may be found  
3 therein.

## SEC. 420.

1 Each box being opened, the ballots contained therein shall be taken  
2 out and counted unopened, except so far as to ascertain that each ballot  
3 is single. And if two or more ballots shall be found so folded together  
4 as to present the appearance of a single ballot, they shall be destroyed,  
5 if the whole number of ballots exceed the whole number of votes, and  
6 not otherwise.



## SEC. 421.

1 No ballot properly endorsed, found in a box different from that de-  
2 signated by its endorsement, shall be rejected, but shall be counted in  
3 the same manner as if found in the box designated by such endorse-  
4 ment, provided that by the counting of such ballot or ballots, it shall  
5 not produce an excess of votes over the number of voters as designated  
6 on the poll lists.

## SEC. 422.

1 If the ballots shall be found to exceed in number the whole number  
2 of votes on the correspondent columns of the poll lists, they shall be  
3 replaced in the box, and one of the inspectors shall, without seeing the  
4 same, publicly draw out and destroy so many ballots unopened, as shall  
5 be equal to such excess.

## SEC. 423.

1 The board shall then proceed to canvass and estimate the votes.

## SEC. 424.

1 If after having opened or canvassed the ballots, it should be found  
2 that the whole number of them exceeds the whole number of voters  
3 entered on the poll lists, the inspectors shall return all the ballots into  
4 the box, and shall thoroughly mingle the same; and one of the inspec-  
5 tors to be designated by the board, shall publicly draw out of such box,  
6 without seeing the ballots contained therein, so many of such ballots as  
7 shall be equal to the excess, which shall be forthwith destroyed.

## SEC. 425.

1 The canvass shall be completed by ascertaining how many ballots of  
2 the same kind corresponding in respect to the names of persons thereon



3 and the offices for which they are designated, have been received : and  
4 the result being found, the inspector shall securely attach to a state-  
5 ment of such canvass one ballot of each kind found to have been given  
6 for the officers to be chosen at such election, any or either of them,  
7 except those given for electors of president and vice-president; and  
8 they shall state in words at full length immediately opposite such bal-  
9 lot, and written partly on such ballot and partly on the paper to which  
10 it shall be attached, the whole number of all the ballots that were re-  
11 ceived which correspond with the one so attached, so that one of each  
12 kind of the ballots received at such election for the officers then to be  
13 chosen, shall be attached to such paper, with a statement of such can-  
14 vass. They shall also attach to such paper, the original ballots rejected  
15 by them as being defective, which were given at such election.

## SEC. 426.

1 When electors of president and vice-president shall be chosen at any  
2 election, the inspectors shall make a separate canvass and statement of  
3 votes given for electors, in the manner prescribed in the last preceding  
4 section, by ascertaining how many ballots of the same kind, corres-  
5 ponding in respect to the names thereon, have been received ; and the  
6 result being found, the inspectors shall securely attach to paper one  
7 original ballot of each kind found to have been given for electors, and  
8 shall state, in words at full length opposite such ballot, and written  
9 partly thereon, and partly on the paper to which it shall be attached,  
10 the whole number of ballots for electors, that were found to have been  
11 received, corresponding with the one so attached. They shall also  
12 attach to such paper all original ballots for electors, rejected by them as  
13 being defective.



## SEC. 427.

1 The statements to be made by the inspectors shall contain a caption,  
2 stating the day on which, and the number of the district, the town or  
3 ward, and the county at which the election was held, in relation to  
4 which such statement shall be made; it shall also contain a statement  
5 showing the whole number of ballots taken for each person, designating  
6 the office for which they are given, which statement shall be written in  
7 words at length; and at the end thereof, a certificate that such state-  
8 ment is correct in all respects; which certificate shall be subscribed by  
9 the inspectors.

## SEC. 428.

1 A true copy of the several statements made by the inspectors, shall  
2 be made and certified by them, and immediately filed by them, in the  
3 office of the clerk of the town or city.

## SEC. 429.

1 The poll lists kept at such election shall be filed by the inspectors, or  
2 one of them, in the office of the clerk of the town or city in which such  
3 election was held, and shall be there preserved.

## SEC. 430.

1 The remaining ballots not so pasted or attached, shall be destroyed,  
2 and the board of inspectors shall be dissolved.

## SEC. 431.

1 The original statements, duly certified, shall be delivered by the in-  
2 spectors, or by one of them to be deputed for that purpose, to the super-  
3 visors of the town or ward, within twenty-four hours after the same  
4 shall have been subscribed. If there be no supervisor, or he shall be



5 disabled from attending the board of county canvassers, such original  
6 statement shall be delivered to one of the assessors of the town or ward  
7 in which such election was held.

8 The following is proposed to be added to this section :

9 "Except in the city and county of New-York, in which city and  
10 county, the inspectors of elections of the several wards, or a majority  
11 of them, on the day succeeding any election, shall meet in their respec-  
12 tive wards at noon of that day, at the place where the poll of the first  
13 election district in such ward was held, and shall appoint under their  
14 hands, or the hands of a majority of the inspectors attending such  
15 meeting, one of their number to be county canvasser; and to the per-  
16 son thus appointed, such original statements shall be delivered by the  
17 inspectors within the time limited in this section. The inspectors thus  
18 appointed in the several wards shall be and constitute the board of  
19 county canvassers for the city and county of New-York."

It has been suggested that there are great delays in completing the county canvass in New-York, and that the aldermen of the several wards, composing the board of county canvassers, owing to their other duties and engagements, are unable to attend more than one or two hours, in each day, to their duties as canvassers, and that in some instances, the final estimate of votes is not completed until weeks have elapsed after the election. The creation of a new board is not suggested on any intimation or suspicion that the aldermen neglect their duty; but because, from their other duties, they are unable uninterruptedly to devote all their time to the business of canvassing and estimating votes. It is proper there should be no delay in this respect, and this section is proposed for the consideration of the legislature, as the best means of remedying what may be considered an evil. If it is adopted, the word "inspectors" should be inserted after the word "supervisors," in sections 432, 436, and 442.



## TITLE 34.

**Of the board of county canvassers, and their proceedings.**

- SECTION 432. Board of county canvassers, how composed.
- 433. When and where to meet.
  - 434. Who to be secretary of the board.
  - 435. Members of canvassers to take oath.
  - 436. What number to constitute a quorum.
  - 437. Estimate of votes to be made.
  - 438. Separate statement of votes to be made.
  - 439. Number of votes, and names written at length.
  - 440. How statements certified.
  - 441. Board to determine and certify, who elected members of assembly, and county officers.
  - 442. Copy of statement to be published.
  - 443. Original statement, when to be delivered to county clerk.
  - 444. Board to adjourn if majority not present, or statement of votes not produced.
  - 445. Canvassers less than majority, when to proceed.
  - 446. In what cases statement of votes to be returned for correction.

## SEC. 432.

1 The supervisors or assessors, to whom the original statements of the  
2 canvass of votes in the towns or wards, to which they respectively be-  
3 long, shall have been delivered, shall form the county board of can-  
4 vassers.

## SEC. 433.

1 They shall meet at the office of the clerk of the county, on the Tues-  
2 day next following the election, before one o'clock in the afternoon of  
3 that day, in all the counties of this State except the county of Hamil-  
4 ton, which shall meet on the first Friday next following every election,  
5 and shall choose one of their number as chairman. The boards of  
6 county canvassers, when duly organised, shall proceed to estimate the  
7 votes of the county, and make the statement of the votes given in such  
8 county as in this title is provided. If such statement cannot be made  
9 on the day the board of county canvassers are first organised, they may  
10 adjourn from day to day till the same is completed; but it shall be the  
11 duty of every board of canvassers, to devote at least ten hours in each



12 day to the business of estimating the votes given in their county, and  
13 to making the statements thereof, until such estimate shall be com-  
14 pleted and such statements made.

This section is intended to prevent delays in the completion of the county canvass.

SEC. 434.

1 The clerk of the county, or in his absence his deputy, shall be secre-  
2 tary of the board.

SEC. 435.

1 The chairman shall then administer the constitutional oath to each  
2 member of the board, and the same oath shall be administered to him  
3 by the secretary.

SEC. 436.

1 The major part of the supervisors or assessors to whom the original  
2 statements of the canvass in the several districts in their towns or wards  
3 shall have been delivered, shall be a sufficient number to constitute a  
4 board.

SEC. 437.

1 The original statements of the canvass in each district shall then be  
2 produced, and from them the board shall proceed to estimate the votes of  
3 the county, and shall make such statements thereof as the nature of the  
4 election shall require; such statements shall then be delivered to and  
5 deposited with the county clerk.

SEC. 438.

1 They shall make a separate statement containing the whole number  
2 of votes given in such county for the office of governor, lieutenant gov-  
3 ernor, judge of the court of appeals, justice of the supreme court, clerk



4 of the court of appeals, secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor, canal commissioner, inspector of state prisons, senator in each district, and representative in congress in each district, or any or either of them; another, of the votes given for all county officers, any or either of them; another, of the votes given for member of assembly, in each assembly district; and another of the votes for electors of president and vice president; and another, of the votes given for any proposed amendment to the constitution; the names of the persons for whom such votes were given, and the number of votes given for each.

## SEC. 439.

1 In such statements, the whole number of votes given in each town and district, the names of the candidates, and the number of votes given to each, shall be written out in words at full length.

## SEC. 440.

1 Each statement shall be certified as correct, and attested by the signatures of the chairman and secretary of the board; and a copy of each, thus certified and attested, shall be delivered to the county clerk, to be recorded in his office.

## SEC. 441.

1 Upon the statement of votes given for members of assembly and county officers, the board shall proceed to determine what person or persons have, by the greatest number of votes, been duly elected to each of the offices mentioned in each statement.



## SEC. 442.

1 The board shall cause a copy of every such determination, and of the  
2 statement upon which it shall be made, to be published in one or more  
3 of the newspapers printed in the county; but such statement shall not  
4 contain the name of any person voted for, at such election for any office,  
5 who shall not have received twenty votes for such office.

Note. The ballot box is often made the means by which scurrilous, and indecent allusions to individuals are placed before the public, and unless there are twenty votes given for an individual, that are identical no good reason for their publication exists.

## SEC. 443.

1 If any one of the supervisors or assessors appointed to attend the  
2 county canvass, shall be unable to attend the meeting of the board on  
3 the day appointed for such meeting, he shall, on or before that day,  
4 cause to be delivered at the office of the county clerk, the original state-  
5 ment of the votes of his town or ward.

## SEC. 444.

1 If on that day a majority of the county canvassers shall not attend,  
2 or the statements of the votes from every district in the county shall  
3 not be produced, the canvassers then present, shall adjourn to some con-  
4 venient hour of the next day.

## SEC. 445.

1 At that hour they shall again meet, and the canvassers then attend-  
2 ing, although less than a majority of the whole, shall organize them-  
3 selves as a board, and upon the statements, or certified copies thereof,  
4 then produced, shall proceed to estimate, state and certify the votes of  
5 the county, in the manner before directed.



## SEC. 446.

1 If upon proceeding to canvass the votes, it shall clearly appear to the  
2 canvassers that in any statement produced to them, certain matters are  
3 omitted, which should have been inserted, or that any mistakes  
4 which are clerical merely exist, they shall cause the said state-  
5 ment to be sent by one of their number, (who they shall depute for that  
6 purpose,) to the town or ward inspectors, and town or ward canvassers  
7 of the town or ward from whom they were received, to have the same  
8 corrected; and the said canvasser so deputed, shall immediately proceed  
9 and give notice to the said town or ward inspectors and canvassers,  
10 whose duty it shall be forthwith to assemble together and make such  
11 correction as the facts of the case require; but such town or ward in-  
12 spectors and canvassers shall not at such meeting change or alter any  
13 decision before made by them, but shall only cause their canvass to be  
14 correctly stated; and the board of county canvassers are authorised to  
15 adjourn from day to day, for the purpose of obtaining and receiving such  
16 statement, such adjournment not to extend beyond three days.

## TITLE 35.

**Of the duty and proceedings of the county clerk.**

SECTION 447. Clerk to deliver statements to county canvassers.

448. To procure those not returned to him.

449. To record statements of county canvassers.

450. To prepare copies of certain statements.

451. Transmit them to the governor, secretary of state and comptroller; and

452. To deliver to county officers certificates of their election.

453. To transmit to the secretary of state the names of all county officers elected, and of members of assembly chosen at general and special elections.

## SEC. 447.

1 The county clerk sha'l deliver to the board of county canvassers, all  
2 the certified statements of the votes taken in each town or ward at the  
3 next preceding election that shall have been received at his office.



## SEC. 448.

1 If on the day appointed for the meeting of the board of county can-  
2 vassers, the board shall not have been organized, owing to a deficient  
3 return of the votes of the county; the county clerk shall, by a special  
4 messenger or otherwise, obtain necessary statements or certified copies  
5 thereof, in time to be produced to the board at their next meeting.

## SEC. 449.

1 The county clerk shall record in his office, all the statements and cer-  
2 tificates that shall have been delivered to him, by the county board of  
3 canvassers, and shall keep a proper book for that purpose.

## SEC. 450.

1 Of the statement and certificate of the votes for the office of gover-  
2 nor, lieutenant-governor, judges of the court of appeals, justices of the  
3 supreme court, clerk for the court of appeals, secretary of state, comp-  
4 troller, treasurer of the state, attorney-general, state engineer and sur-  
5 veyor, canal commissioners, inspectors of state prisons, senators and  
6 representatives in congress, or either of them, he shall prepare three  
7 certified copies under his signature, and sealed with his seal of office.

## SEC. 451.

1 Within five days after the adjournment of the board of county can-  
2 vassers, the county clerk shall deposite in the nearest post-office, directed  
3 to the governor, to the secretary of state and to the comptroller, each,  
4 one of the certified copies of the statement and certificates of votes, so  
5 prepared by him.



## SEC. 452.

1 He shall prepare as many certified copies of each certificate of the  
2 determination of the board of county canvassers, as there are persons  
3 declared to be elected in such certificate, and shall, without delay, de-  
4 liver one of such copies to each person so elected.

## SEC. 453.

1 He shall transmit to the secretary of state, within twenty days after a  
2 general election, a list of the names of the persons elected to any coun-  
3 ty office at such election, with the places of their residence respectively ;  
4 and within twenty days after any annual general election, and within  
5 ten days after any special election, a list of the names of the persons  
6 elected in the county as members of assembly, and the number of the  
7 election district in which they were severally chosen, if such county  
8 contains more than one assembly district.

## TITLE 36.

**Of the duties of the Secretary of State, previous to the meeting of State Can-  
vassers.**

SECTION 454. Certified statements received by Secretary of State to be filed.

455. If not received from county clerk, Secretary to send a special messenger therefor.

456. County clerk to make and deliver statements to messenger.

457. Messenger to deliver statements received from county clerk to Secretary of State.

458. Secretary to appoint a meeting of, and to notify State canvassers.

459. If State canvassers fail to attend, notice to be given to the mayor and recorder of Albany.

## SEC. 454.

1 It shall be the duty of the secretary of state to file in his office, the  
2 certified statements received by him from a county clerk ; and to obtain  
3 from the governor and comptroller, every such certified statement re-  
4 ceived by either of them, and to file the same in his office.



## SEC. 455.

1 If from any county from which such statement shall be due, none  
2 shall have been received or obtained by him, on or before the last day  
3 of November next after a general election, and within twenty days after  
4 a special election, he shall despatch a special messenger to obtain such  
5 statement from the clerk of such county.

## SEC. 456.

1 Such clerk shall immediately, on the demand of such messenger,  
2 made at his office, make out and deliver to such messenger the state-  
3 ments required.

## SEC. 457.

1 The messenger shall deliver to the secretary of state, as soon as may  
2 be, all such statements as he shall receive, to be filed and recorded as  
3 aforesaid.

## SEC. 458.

1 The secretary of state shall appoint a meeting of the state canvas-  
2 sers to be held at his office, or that of the treasurer or comptroller, on  
3 or before the fifteenth day of December after each general election, and  
4 within forty days after a special election.

## SEC. 459.

1 If a majority of those officers shall be unable or shall fail to attend  
2 on the day appointed, he shall give notice to the mayor and recorde  
3 of the city of Albany, that their attendance is required.



## TITLE 37.

**Of the formation and proceedings of the board of State canvassers.**

SECTION 460. Who to compose board of State canvassers.

461. When the Mayor and Recorder of the city of Albany, to act as State canvassers.

462. State canvassers, how to proceed.

463, 464. To determine and certify who are elected.

465. A state canvasser dissenting, to state his reasons in writing.

466. State canvasser to protest against illegal or irregular proceedings.

467. To deliver protest, and dissent to Secretary of State ; his duty thereupon.

468. Adjournment by the board of State canvassers.

## SEC. 460.

- 1 The secretary of state, comptroller, treasurer, attorney-general and
- 2 state engineer and surveyor, shall be state canvassers; three of whom
- 3 shall be a sufficient number to form a board.

## SEC. 461.

- 1 If a majority of those officers shall be unable, or shall fail to attend,
- 2 the mayor and recorder of the city of Albany, being notified by the
- 3 secretary of state, shall attend without delay, and, with the officers
- 4 attending shall form the board.

## SEC. 462.

- 1 The board when thus formed shall, upon the certified copies of the
- 2 statements made by the boards of county canvassers, proceed to make
- 3 a statement of the whole number of votes given at such election for the
- 4 office of governor and lieutenant governor, or either of them; another
- 5 statement of the votes given for the office of senator; and another, of
- 6 the votes given for representative in congress; another of the votes for
- 7 judges of the court of appeals; another, of the votes for justices of the
- 8 supreme court; another, of the votes for the clerk for the court of
- 9 appeals; another of the votes for secretary of state; another, of the



10 votes for comptroller; another of the votes for state treasurer; another,  
11 of the votes for attorney-general; another, of the votes for state engi-  
12 neer and surveyor; another of the votes for canal commissioners; and  
13 another of the votes for inspectors of state prisons; each of which  
14 statements shall show the names of the persons to whom such votes  
15 shall have been given for either of the said offices, and the whole num-  
16 ber of votes given to each; distinguishing the several districts and coun-  
17 ties in which they were given. They shall certify such statements to  
18 be correct, and subscribe the same with their proper names.

## SEC. 463.

1 Upon such statements they shall then proceed to determine and de-  
2 clare what persons have been, by the greatest number of votes, duly  
3 elected to such offices, or either of them.

## SEC. 464.

1 They shall make and subscribe on the proper statement, a certificate  
2 of such determination, and shall deliver the same to the secretary of  
3 state.

## SEC. 465.

1 If any one of the canvassers shall dissent from a decision of the  
2 board, he shall state at large, in writing, the reasons of such dissent.

## SEC. 466.

1 If any of the acts or proceedings of the board shall appear to any  
2 one of the canvassers to be illegal or irregular, such canvasser shall  
3 protest against the same in writing, setting forth distinctly the grounds  
4 of his protest.



## SEC. 467.

1 The canvasser so dissenting or protesting, shall deliver his dissent  
2 or protest, signed with his proper name, to the secretary of state, who  
3 shall file the same in his office.

## SEC. 468.

1 The board shall have power to adjourn from day to day, for a term  
2 not exceeding five days.

## TITLE 38.

**Of the duties of the Secretary of State, subsequent to the completion of the State canvass.**

SECTION 469. Secretary to record the proceeding of State canvassers.

470. To transmit copy to each person declared elected, and to the governor.

471. To cause a copy of certificate of State canvassers, to be published in each Senate district.

472. To cause certificate of the election of Representative in Congress, to be transmitted to the Speaker of Congress.

473. If persons elected to fill a vacancy in the office of Representative in Congress, the certificate to state the fact

474. To record names of county officers, and designate the counties in which they are chosen.

## SEC. 469.

1 The secretary of state shall record in his office, in a book to be kept  
2 by him for that purpose, each certified statement and determination,  
3 which shall be delivered to him by the board of state canvassers, and  
4 every dissent or protest that shall have been delivered to him by a  
5 canvasser.

## SEC. 470.

1 He shall, without delay, transmit a copy, under the seal of his office,  
2 of such certified determination to each person thereby declared to be  
3 elected, and a like copy to the governor.



## SEC. 471.

1 He shall cause a copy of such certified statements and determina-  
2 tions to be printed in one or more of the public newspapers in each sen-  
3 ate district, if any shall be published therein.

## SEC. 472.

1 He shall prepare a general certificate under the seal of this state, and  
2 attested by him as secretary thereof, addressed to the house of repre-  
3 sentatives of the United States, in that congress for which any person  
4 shall have been chosen, of the due election of the persons so chosen at  
5 each election, as representatives of this state in congress; and shall  
6 transmit the same to the said house of representatives, at their first  
7 meeting.

## SEC. 473.

1 If either of the persons so chosen at such election shall have been  
2 elected to supply a vacancy in the office of representative in congress,  
3 it shall be mentioned by the secretary, in the statements and certificates  
4 to be prepared by him.

## SEC. 474.

1 The secretary of state shall enter in a book to be kept in his office,  
2 the names of all persons elected to any county office, and the names  
3 of members of assembly elected in any county specifying the counties  
4 in which they were severally elected and their place of residence, the  
5 office to which they were respectively elected, and their term of office.



## TITLE 39.

**Of the election of Representatives in Congress.**

SECTION 475. Representatives to be chosen in districts every second year.

476. Notice of resignation, and notice of vacancy by death.

477. When chosen to fill vacancies.

## SEC. 475.

1 Representatives in the house of representatives of the congress of the  
2 United States shall be chosen in the several congress districts, at the  
3 general elections held therein, in every second year, after the year one  
4 thousand eight hundred and forty-eight.

## SEC. 476.

1 If a representative in congress shall resign, he shall forthwith trans-  
2 mit a notice of his resignation to the secretary of state; and if a va-  
3 cancy shall occur, by death or otherwise, in the office of representative  
4 in congress, the clerk of the county in which such representative shall  
5 have resided at the time of his election, shall, without delay, transmit a  
6 notice of such vacancy to the secretary of state.

## SEC. 477.

1 A representative in congress shall be chosen, in any congressional  
2 district, at any annual general election, in the following cases:

3 1. Whenever, before such election, any person elected to the office of  
4 representative in congress shall die, or his right to such office shall have  
5 ceased.

6 2. Whenever a vacancy shall exist in such office, that shall not have  
7 been supplied at a special election.



## TITLE 40.

**Of the election of President and Vice-President.**

- SECTION 478. Electors, when to be chosen.
479. Statement of votes made and transmitted.
480. Copy to be delivered to the clerks of certain counties.
481. Duty of clerks in Franklin, St. Lawrence, Chautauque, Cattaraugus, Tompkins and Suffolk counties.
482. Duty of clerks receiving statement of votes from other counties.
483. Duty of messenger in St. Lawrence county.
484. Duty of messenger in Cattaraugus county.
485. Duty of messenger in Chautauque county.
486. Duty of messenger in Franklin county.
487. Duty of messenger in Tompkins county.
488. Duty of messenger in Suffolk county.
489. Board of State canvassers, when to meet.
490. Board, how to proceed.
491. Secretary of State to deliver certificate to persons elected.
492. Certificate, how published.
493. Punishment of messengers for misconduct.
494. Wilful neglect or corrupt conduct of messenger, how punished.
495. Compensation of messengers.

## SEC. 478.

1 At the general election in November, preceding the time fixed by the  
 2 law of the United States for the choice of president and vice-president  
 3 of the United States, there shall be elected, by general ticket, as many  
 4 electors of president and vice-president as this state shall be entitled to  
 5 appoint; and each elector in this state shall have a right to vote for the  
 6 whole number; and the several persons to the number required to be  
 7 chosen, having the highest number of votes, shall be declared and deem-  
 8 ed duly appointed electors.

## SEC. 479.

1 The county clerk of each county shall make three certified copies of  
 2 the statement of votes given for electors in his county immediately af-  
 3 ter recording the same, and forthwith transmit, by mail, one of such  
 4 certified copies to the governor, another to the secretary of state, and  
 5 deliver the other as hereinafter directed.



## SEC. 480.

1 One of the certified copies of such statement of votes given in each  
2 of the several counties herein named, shall be delivered by the clerks of  
3 such counties respectively, as herein directed, on the day next succeed-  
4 ing that on which the canvass shall have been made, to wit: Those of  
5 the counties of Niagara, Wyoming and Orleans, to the clerk of Genesee;  
6 those of the counties of Livingston, Monroe, Wayne and Yates, to the  
7 clerk of Ontario; that of the county of Seneca, to the clerk of Cayuga;  
8 those of the counties of Cortland and Oswego, to the clerk of Ononda-  
9 ga; that of the county of Madison, to the clerk of Oneida; those of the  
10 counties of Montgomery, Fulton and Saratoga, to the clerk of Schenec-  
11 tady; that of Chenango, to the clerk of Broome; those of the counties  
12 of Rockland, Orange, Ulster and Sullivan, to the clerk of Greene; that  
13 of the county of Richmond, to the clerk of New-York; and those of the  
14 counties of Otsego, Schoharie, Rensselaer and Albany, to the secretary  
15 of state.

## SEC. 481.

1 The clerks of the several counties of Franklin, St. Lawrence, Chau-  
2 tauque, Cattaraugus, Tompkins and Suffolk, immediately after recording  
3 the electoral votes received by them, shall appoint a messenger to re-  
4 ceive and carry the certified copies of the statements of votes given for  
5 electors as herein directed; which appointment shall be made by the  
6 said clerks, under their seal of office.

## SEC. 482.

1 Each clerk of a county having received the certified copies of the  
2 statements of the electoral votes given in any other county, shall deliver  
3 the same to the messenger authorized to receive the certified statements



4 of the electoral votes given in his county, and shall deliver the said last  
5 mentioned statements to the messenger authorized to receive the same  
6 when demanded.

## SEC. 483.

1 The messenger appointed in the county of St. Lawrence, shall imme-  
2 diately after his appointment, receive the certified statements of the  
3 electoral votes of said county, and forthwith proceed to the offices of  
4 the clerks of the counties of Jefferson and Lewis, and receive the cer-  
5 tified statements of the electoral votes of those counties; and within  
6 three days after his appointment, deliver the copies by him received, to  
7 the clerk of Oneida county.

## SEC. 484.

1 The messenger appointed in the county of Cattaraugus, shall, imme-  
2 diately after his appointment, receive the certified statements of the  
3 electoral votes of that county, and forthwith proceed to the clerks' offices  
4 of the counties of Allegany and Steuben, and receive the certified state-  
5 ments of the electoral votes of those counties; and within fifty-six hours  
6 after his appointment, deliver the certified statements by him received,  
7 to the clerk of Ontario county.

## SEC. 485.

1 The messenger appointed in the county of Chautauque, shall, imme-  
2 diately after his appointment, receive the certified statements of the  
3 electoral votes of that county, and forthwith proceed with all reasonable  
4 diligence, to the offices of the clerks of the counties of Erie, Genesee,  
5 Ontario, Cayuga, Onondaga, Oneida, Herkimer and Schenectady, and  
6 receive from the several clerks the certified statements of electoral votes  
7 in those counties respectively; and such others as shall have been de-



livered to such clerks, as herein provided, and deliver the same to the  
9 secretary of state.

## SEC. 486.

1 The messenger appointed in the county of Franklin, shall, immedi-  
2 ately after his appointment, receive the certified statements of the el c-  
3 toral votes of that county, and forthwith proceed with all reasonable  
4 diligence, to the offices of the clerks of the counties of Clinton, Essex,  
5 Warren and Washington, and receive from the several clerks the certi-  
6 fied statements of electoral votes in those counties respectively, and de-  
7 liver the same to the secretary of state.

## SEC. 487.

1 The messenger appointed in the county of Tompkins, shall, immedi-  
2 ately after his appointment, receive the certified statements of the elec-  
3 toral votes of that county, and forthwith proceed with all reasonable  
4 diligence, to the offices of the clerks of the counties of Chemung, Tioga,  
5 Broome, Delaware and Greene, and receive from the several clerks the  
6 certified statements of electoral votes in those counties respectively, and  
7 such others as shall have been delivered to such clerks, as herein pro-  
8 vided, and deliver the same to the secretary of state.

## SEC. 488.

1 The messenger appointed in the county of Suffolk, shall, immediate-  
2 ly after his appointment, receive the certified statements of the elec-  
3 toral votes of that county, and forthwith proceed with all reasonable  
4 diligence, to the offices of the clerks of the counties of Queens, Kings,  
5 New-York, Westchester, Putnam, Dutchess and Columbia, and receive  
6 from the several clerks the certified statements of electoral votes in



7 those counties respectively, and such others as shall have been delivered  
8 to such clerks, as herein provided, and deliver the same to the secretary  
9 of state.

## SEC. 489.

1 The board of state canvassers shall meet at the office of the secretary  
2 of state, on the Wednesday next after the third Monday of November  
3 after every such election, or sooner, if all the certified copies of the  
4 statements of the county canvassers shall have been received from all  
5 the counties, to canvass the votes given for the electors of president and  
6 vice president; and in case all the certified statements shall not have  
7 been received on that day, the board may adjourn from day to day un-  
8 til the same shall have been received, not exceeding five days; and if  
9 at the expiration of four days, certified copies of the statements of the  
10 county canvassers shall not have been received from any county, the  
11 board shall proceed to canvass upon such of the said statements as  
12 shall have been received.

## SEC. 490.

1 The board of state canvassers shall proceed in making a statement  
2 of all the votes, and determining and certifying the persons elected, in  
3 the manner prescribed by law in relation to the election of state officers.

## SEC. 491.

1 The secretary of state, shall, without delay, cause a copy, under the  
2 seal of his office, of the certified determination of the board of state  
3 canvassers, to be delivered to each of the persons therein declared to  
4 be elected; and for that purpose he may employ such and so many  
5 messengers as he shall deem necessary.



## SEC. 492.

1 The determination and certificate of the board of state canvssers in  
2 relation to the choice of electors shall be published in the same manner  
3 as provided by law in relation to the certificates of the election of state  
4 officers.

## SEC. 493.

1 If any of the messengers shall be guilty of destroying the certificates  
2 entrusted to their care, or wilfully doing any act that shall defeat the  
3 due delivery of them as directed by this act, he shall be punished by  
4 imprisonment in the state prison, at hard labor, for a term not less than  
5 three, nor exceeding five years; and if any person shall be found guilty  
6 of taking away from any of the said messengers, either by force, or in  
7 any other manner, any such certificates entrusted to his care, or wilful-  
8 ly doing any act that shall defeat the due delivery thereof, as directed  
9 by this act, he shall be punished by imprisonment in the state prison, at  
10 hard labor, for not less than two, nor exceeding four years.

## SEC. 494.

1 If any officer or messenger, on whom any duty is enjoined in this act,  
2 shall be guilty of any wilful neglect of such duty, or of any corrupt  
3 conduct in the execution of the same, and be thereof convicted, he shall  
4 be deemed guilty of a misdemeanor, punishable by fine not exceeding  
5 five hundred dollars, or imprisonment not exceeding one year.

## SEC. 495.

1 The messengers employed or appointed under this act, shall receive  
2 for their compensation twelve cents per mile for traveling, to be audited  
3 by the comptroller upon the certificate of the secretary of state.



## TITLE 41.

**Of the formation and proceedings of the college of electors.**

- SECTION 496. Meeting of electors. College, how formed.  
497. President and secretary, how chosen.  
498. Duty of Secretary of State.  
499. Electors, when and how to vote.  
500. Lists to be prepared.  
501. Electors to appoint a messenger, his duty.  
502. Duty of messenger, if President of the Senate is absent.  
503. Lists to be forwarded by mail, and delivered to the Judge of the United States for the Northern District of New-York.  
504. Compensation of electors.

## SEC. 496.

1 The electors of president and vice-president shall convene at the cap-  
2 itol on the day preceding the first Wednesday in December after their  
3 election; and those of them who shall be so assembled at four o'clock  
4 in the afternoon of that day, shall immediately after that hour proceed  
5 to fill, by ballot and by plurality of votes, all vacancies in the electoral  
6 college, occasioned by the death, refusal to serve, or neglect to attend  
7 at that hour, of any elector, or occasioned by an equal number of .otes  
8 having been given for two or more candidates.

## SEC. 497.

1 The electoral college being thus completed, they shall then choose a  
2 president and secretary from their own body.

## SEC. 498.

1 The secretary of state shall prepare three lists of the names of the  
2 electors; procure to the same the signature of the governor; affix  
3 thereto the seal of the state; and deliver them, thus signed and sealed,  
4 to the president of the college of electors, on or before the said first  
5 Wednesday in December.



## SEC. 499.

1 On the said first Wednesday in December, the electors shall meet at  
2 the capitol, and then and there vote by ballot for president and vice-  
3 president, one of whom at least shall not be an inhabitant of the same  
4 state with themselves. They shall name in their ballots the person  
5 voted for as president, and in distinct ballots the person voted for as  
6 vice president.

## SEC. 500.

1 They shall make distinct lists of all persons voted for as president,  
2 and of all persons, voted for as vice-president, and of the number of  
3 votes for each, which lists they shall sign and certify, and after annex-  
4 ing thereto one of the lists received from the secretary of state, they  
5 shall seal up the same, certifying thereon that lists of the votes of this  
6 state for president and vice-president are contained therein.

## SEC. 501.

1 The electors shall then, by writing under their hands, or under the  
2 hands of a majority of them, appoint a person to take charge of the  
3 lists so sealed up, and to deliver the same to the president of the senate  
4 at the seat of government of the United States, before the first Wed-  
5 nesday in January then next ensuing.

## SEC. 502.

1 In case there shall be no president of the senate at the seat of govern-  
2 ment on the arrival of the person entrusted with the lists of the votes  
3 of the electors, then such person is required to deliver the lists of votes  
4 in his custody, into the office of the secretary of state of the United  
5 States.



## SEC. 503.

1 The electors are also required to forward forthwith, by the post office,  
2 to the president of the senate of the United States, at the seat of govern-  
3 ment, and to deliver forthwith to the judge of the United States for the  
4 northern district of the state of New-York, similar lists, signed, annex-  
5 ed, sealed up, and certified in the manner aforesaid.

## SEC. 504.

1 Every elector of this state for the election of a president and vice-  
2 president of the United States, who shall attend at any election of those  
3 officers, and give his vote at the time and place appointed by law, shall  
4 be entitled to receive for his attendance at such election, and for travell-  
5 ing to and from his place of residence by the most usual route, the same  
6 sum as shall at the time be allowed by law to members of the legisla-  
7 ture for their attendance and travel, to be paid in like manner.

## TITLE 42.

**Of the election of Senators in Congress.**

- SECTION 505. Senators to be chosen by legislature, and when.  
506. Vacancies in the office of Senator, when filled.  
507. Mode of proceeding in the choice of Senator.  
508. Resolution, evidence of election.

## SEC. 505.

1 On the first Tuesday of February, next before the expiration of the  
2 time for which any senator was elected to represent this State in con-  
3 gress, if the legislature shall be then in session, and if not, then within  
4 ten days after a quorum of both houses shall be assembled at the then  
5 next meeting of the legislature, an election shall be held for a senator  
6 in congress, at the place where the legislature shall be then sitting, in  
7 the room of such senator so going out of office.



## SEC. 506.

1 Whenever the seat of any such senator shall become vacant before  
2 the expiration of the time for which he was elected, another senator  
3 shall be elected in his room within ten days after the legislature shall  
4 have notice of such vacancy, at the place where it shall be then sitting.

## SEC. 507.

1 Such election shall be made by the legislature in the following man-  
2 ner: the senate and assembly shall each openly nominate one person  
3 for the office of senator in congress; after which they shall immediate-  
4 ly meet, and if they shall agree in their nominations, the person so  
5 nominated shall be appointed to the office for which he shall be  
6 nominated; if they shall disagree, the election shall be made by the  
7 joint ballot of the senators and members of assembly.

## ALTERNATIVE SEC. 507.

1 Such election shall be made by the legislature in the following man-  
2 ner: the senate and assembly shall meet in the assembly chamber, and  
3 by joint ballot of the senators and members of assembly, choose a per-  
4 son to represent this state as senator in the senate of the congress of  
5 the United States.

## SEC. 508.

1 Whenever any senator shall be chosen as aforesaid, copies of the  
2 resolutions of the senate and assembly, testifying such choice, signed  
3 by the president of the senate and speaker of the assembly, shall be  
4 thereupon delivered to the person so chosen a senator, as evidence of  
5 such election.



## TITLE 43.

**Penalties for violating this chapter, and for misconduct at elections.**

SECTION 509. Persons swearing falsely deemed guilty of perjury.

510. Persons procuring others to swear falsely, deemed guilty of subornation of perjury.

511, 512. Officers guilty of wilful neglect or corrupt conduct.

513. Penalty for bribery, &c.

514. Penalty for calling out militia within certain days.

515. Prohibitions against providing entertainments and contributing money, &c.

516, 517. Punishment for fraudulently changing vote of elector, or violating any provision of this chapter.

518. Penalties for disobeying orders of inspectors, obstructing voters, &c.

519. Penalty for voting out of election district, or voting more than once at the same election.

520. Penalty for procuring illegal votes.

521. Penalty for procuring non-residents to come into a town or district to vote.

522. Persons not qualified, voting or offering to vote, guilty of misdemeanor, and in certain cases of felony.

523. Duty of inspectors and other officers to give note of offences under this chapter to district attorney.

524. Presiding judge of criminal courts to charge grand juries to notice specially offences against this chapter.

## SEC. 509.

1 If any elector challenged as unqualified, shall be guilty of wilful and  
2 corrupt false swearing or affirming, in taking any oath or affirmation  
3 prescribed by this chapter or shall, on his oath or affirmation, make any  
4 false statement respecting his qualifications as a voter, or his right to  
5 vote for any officer, such person shall be adjudged guilty of wilful and  
6 corrupt perjury.

## SEC. 510.

1 Every person who shall wilfully and corruptly procure any person to  
2 swear or affirm falsely as aforesaid, shall be adjudged guilty of suborna-  
3 tion of perjury; and shall upon conviction thereof, suffer the punish-  
4 ment directed by the law in cases of wilful and corrupt perjury.

## SEC. 511.

1 If any officer on whom any duty is enjoined in this chapter, or in  
2 any statute relating to elections, shall be guilty of any wilful neglect of  
3 such duty, or of any corrupt conduct in the execution of the same, and  
4 be thereof convicted, he shall be deemed guilty of a misdemeanor,



5 punishable by fine or imprisonment ; the fine in no case to exceed the  
6 sum of five hundred dollars, nor the imprisonment the term of one year.

## SEC. 512.

1 In case any inspector of election shall knowingly and wilfully per-  
2 mit or suffer any person to vote at any election, who is not entitled to  
3 vote thereat, the said inspector so offending shall on conviction thereof,  
4 be adjudged guilty of a misdemeanor, and shall be sentenced to pay a  
5 fine of five hundred dollars and be imprisoned in the county jail for six  
6 months.

## SEC. 513.

1 If any person shall, by bribery, menace, or other corrupt means or  
2 device whatsoever, either directly or indirectly, attempt to influence any  
3 elector of this state in giving his vote or ballot, or deter him from giving  
4 the same, or disturb or hinder him in the free exercise of the right of  
5 suffrage, at any election within this state, held pursuant to this chapter,  
6 and shall thereof be convicted, such person so offending and convicted,  
7 shall be adjudged guilty of a misdemeanor, and be fined or imprisoned,  
8 according to the discretion of the court before which such conviction  
9 shall be had ; such fine in no case to exceed five hundred dollars, nor  
10 such imprisonment one year.

## SEC. 514.

1 If any officer or other person shall call out or order any of the militia  
2 of this state, to appear and exercise on any day during any election to  
3 be held by virtue of this chapter, or within five days previous thereto,  
4 except in cases of invasion or insurrection, he shall forfeit the sum of  
5 five hundred dollars for every such offence.



## SEC. 515.

1 It shall not be lawful for any candidate for any elective office, with  
2 intent to promote his election, or for any other person, with intent to  
3 promote the election of any such candidate, either,  
4 1. To provide or furnish entertainment at his expense, to any meeting  
5 of electors, previous to, or during the election at which he shall be a  
6 candidate; or,  
7 2. To pay for, procure, or engage to pay for any such entertainment;  
8 or,  
9 3. To furnish any money or other property to any person, for the pur-  
10 pose of being expended in procuring the attendance of voters at the  
11 polls; or,  
12 4. To engage to pay any money, or deliver any property, or otherwise  
13 compensate any person for procuring the attendance of voters to the  
14 polls; or,  
15 5. To contribute money for any other purpose intended to promote an  
16 election of any particular person or ticket, except for defraying the ex-  
17 penses of printing, and the circulation of votes, handbills and other pa-  
18 pers, previous to any such election, or for conveying sick, poor or infirm  
19 electors to the polls.

## SEC. 516.

1 No person shall fraudulently or deceitfully change or alter a ballot of  
2 any elector, nor shall furnish an elector any ballot containing more than  
3 the proper number of names, or cause any other deceit to be practiced  
4 with intent fraudulently to induce such elector to deposit the same as  
5 his vote, and thereby to have the same thrown out and not counted.



## SEC. 517.

1 Every person offending against the provisions of this chapter, shall be  
2 deemed guilty of a misdemeanor, punishable by fine not exceeding two  
3 hundred and fifty dollars, or by imprisonment not exceeding six months.

## SEC. 518.

1 If any person shall wilfully disobey any lawful commands of the  
2 board of inspectors of any election, or shall wilfully and without lawful  
3 authority, obstruct, hinder or delay any elector on his way to any poll  
4 where an election shall be held, or while he is exercising or attempting  
5 to exercise the right of voting, or shall aid or assist in such obstruction  
6 or delay, he shall, on conviction, be adjudged guilty of a misdemeanor,  
7 and be fined in a sum not exceeding two hundred and fifty dollars, and  
8 may be imprisoned in the discretion of the court, for not more than six  
9 months.

## SEC. 519.

1 Any person who, at any general or special election, or city or charter  
2 election, shall knowingly vote or offer to vote in any election district in  
3 which he does not reside, except as herein before provided, or who shall  
4 vote or offer to vote more than once at the same election, either in the  
5 same or in any other election district, shall, on conviction, be adjudged  
6 guilty of a misdemeanor, and punishable by fine not exceeding two  
7 hundred dollars, or by imprisonment not exceeding six months, or by  
8 both, as the court may direct.

## SEC. 520.

1 Every person who shall procure, aid, assist, counsel or advise another  
2 to give or offer his vote at any general, town, city or charter election,



3 knowing that such person is not duly qualified to vote at the place where  
4 the vote is given or offered, shall, on conviction, be adjudged guilty of a  
5 misdemeanor, and punishable as prescribed in the last preceding section  
6 of this title.

SEC. 521.

1 Every person who shall procure, aid, assist, counsel or advise another  
2 to go or come into any town, ward or election district, for the purpose  
3 of giving his vote at any general, special, town or city election, know-  
4 ing that the person is not duly qualified to vote in such town, or ward,  
5 or election district, shall, on conviction, be deemed guilty of a misde-  
6 meanor, and punishable as prescribed in section 518 of this title.

SEC. 522.

1 Any person not duly qualified to vote under the laws of this state, who  
2 shall knowingly vote or offer to vote at any general or special, town or  
3 charter election in this state, shall be adjudged guilty of a misdemeanor,  
4 and on conviction shall be imprisoned for a period not exceeding six  
5 months, at the discretion of the court before which the offence is tried.  
6 And any inhabitant of another state, or country, who shall vote or offer  
7 to vote at any general, special, town or city charter election in this state,  
8 shall be adjudged guilty of a felony, and on conviction, shall be impri-  
9 soned in the state prison, for a period not exceeding one year, at the  
10 discretion of the court before which the offence is tried. And it shall  
11 be the duty of the district attorney in the county where the offence shall  
12 have been committed, to adopt effectual measures for the punishment  
13 of all persons who, without being legally qualified, shall vote, or attempt  
14 to vote, at any election in this state.



## SEC. 523.

1 It shall be the duty of every inspector of elections, sheriffs, constables  
2 and justices of the peace within this state, knowing that an offence has  
3 been committed, under this act, or having good reason to believe that  
4 an offence has been committed, to give information thereof to the dis-  
5 trict attorney of the county in which the offence shall have been com-  
6 mitted, whose duty it shall be to adopt effectual measures for the punish-  
7 ment of all persons violating the provisions of this act.

## SEC. 524.

1 It shall be the duty of the presiding judge of every court of sessions,  
2 general sessions of the peace, and court of oyer and terminer within  
3 this state, specially to charge the grand jury at each term of said court,  
4 to take notice of all offences committed in violation of the provisions  
5 of this act.

Note to title 43. This title contains fifteen distinct provisions, prohibiting acts, or declaring them unlawful, and twelve provisions declaring the legal effect of such prohibited acts, and the punishment therefor. These provisions are in different language, and establish several different punishments.

The acts prohibited are substantially of the same degree of turpitude, and equally mischievous; we can see no reason why, with the exception of one of the prohibited acts, which is declared a felony, they should not all be made subject to a like penalty.

There may be reasons which we have not discovered why, in the act of 1842, this title contains such a diversity of provisions. We deem it, however, bad policy to change the substance or language of statutes for slight causes, and have therefore concluded to report this title, substantially, as it now exists, and also, to report an *alternative title*, in which we have sought to remedy the deficiencies of the present title.

If the Legislature shall agree with us, in our view of the matter, they will strike out title 43, and adopt in its place *alternative title 43*.



## ALTERNATIVE TITLE 43.

**Penalties for violating this chapter, and for misconduct at elections.**

SECTION 509. False swearing deemed perjury.

510. Procuring false swearing deemed subornation of perjury.

511. Penalty of official neglect or corrupt conduct.

512.

SUB. SEC. 1. Permitting persons to vote who are not entitled, prohibited.

2. Influencing voter by bribery, menace, &c., prohibited.

3. Military exercises on election day, prohibited.

4. Changing or altering ballot, prohibited.

5. Disobedience of commands of board of inspectors and obstructing and hindering voters, prohibited.

6. Voting in district where voter does not reside, prohibited.

7. Procuring person to vote who is not qualified, prohibited.

8. Procuring any person to go or come into any town, &c., to vote, prohibited.

9. Voting by persons not qualified, prohibited.

513. Inhabitants of other States prohibited from voting.

514. Unlawful for candidate or other person in his behalf:

SUB. SEC. 1. To provide entertainment.

2. To pay or procure, or engage to pay for entertainment.

3. To furnish money or propose to procure attendance of voters.

4. To compensate other persons for procuring attendance.

5. To contribute money to promote the election of a person or ticket.

515. Certain acts declared misdemeanors.

516. Felony declared.

517. Duty of district attorney.

518. Duty of other officers.

## SEC. 509.

1 If any elector challenged as unqualified, shall be guilty of wilful and  
2 corrupt false swearing or affirming, in taking any oath or affirmation  
3 prescribed by this chapter, or shall on his oath or affirmation, make any  
4 false statement respecting his qualifications as a voter or his right to  
5 vote for any officer, such person shall be adjudged guilty of wilful and  
6 corrupt perjury.

Laws 1842, Title 7, Sec. 1.

## SEC. 510.

1 Every person who shall wilfully and corruptly procure any person to  
2 swear or affirm falsely as aforesaid, shall be adjudged guilty of suborna-  
3 tion of perjury; and shall upon conviction thereof, suffer the punish-  
4 ment directed by the law in cases of wilful and corrupt perjury.

The same, Sec. 2.



## SEC. 511.

1 If any officer on whom any duty is enjoined in this chapter, or in  
2 any statute relating to elections, shall be guilty of any wilful neglect  
3 of such duty, or of any corrupt conduct in the execution of the same,  
4 and be thereof convicted, he shall be deemed guilty of a misdemeanor,  
5 punishable by fine or imprisonment; the fine in no case to exceed the  
6 sum of five hundred dollars, nor the imprisonment the term of one  
7 year.

## SEC. 512.

1 1. It shall not be lawful for any inspector of elections knowingly and  
2 wilfully to permit any person to vote at any election, who is not entitled  
3 to vote thereat; nor

4 2. For any person, by bribing, menace or other corrupt means or de-  
5 vice, directly or indirectly, to influence or attempt to influence any  
6 elector of this state in giving his vote or ballot or deter him from giving  
7 the same, or disturb him in the free exercise of the right of voting at  
8 any election held pursuant to this chapter; nor

9 3. For any officer or other person on the day of any such election, or  
10 within five days previous thereto, to call out or order any of the militia  
11 or any military company of this State, to appear, parade, exercise or  
12 drill, except in cases of insurrection or invasion; nor

13 4. For any person fraudulently or deceitfully to change or alter a bal-  
14 lot of any elector, or furnish any elector with any ballot containing  
15 more than the proper number of names, or cause any other deceit to be  
16 practised with intent fraudulently to induce such elector to deposite the  
17 same as his vote; nor

18 5. For any person, wilfully to disobey any lawful commands of the  
19 board of inspectors of any election, or without lawful authority, to



20 obstruct, hinder or delay, or aid or assist in obstructing hindering or de-  
21 laying, any elector, in his way to any poll, where any election is held,  
22 or while he is exercising, or attempting to exercise the right of voting ;  
23 nor

24 6. For any person to vote, or offer to vote, at any general or special,  
25 town, city or charter election, in any election district in which he does  
26 not reside ; (except when authorised so to vote in this Title ;) nor to  
27 vote or offer to vote more than once at the same election ; nor

28 7. For any person, to procure aid, assist, counsel or advise another, to  
29 give or offer his vote at any such election, knowing that such person is  
30 not qualified to vote, at the time and place where the vote is given or  
31 offered.

32 8. For any person, to procure, aid, assist, counsel or advise another,  
33 to go, or come into any town, ward or election district, for the purpose  
34 of giving his vote therein, at any such election, knowing that such per-  
35 son is not qualified to vote therein.

36 9. For any person, not duly qualified to vote, under the laws of this  
37 state, to knowingly vote, or offer to vote, at any such election.

#### SEC. 513.

1 It shall not be lawful, for any inhabitant of another state, or county,  
2 to vote or offer to vote, within this state, at any such election.

#### SEC. 514.

1 It shall not be lawful, for any candidate for any elective office, with  
2 intent to promote his election, or for any other person, with intent to  
3 promote the election of any such candidate, either,

4 1. To provide or furnish entertainment, at his expense to any meet-  
5 ing of electors, previous to, or during the elections at which he shall be  
6 a candidate : or,



- 7    2. To pay for, or procure or engage to for any such entertainment; or  
8    3. To furnish any money or any other property to any person, for the  
9    purpose of being expended in procuring the attendance of voters at the  
10   polls; or  
11   4. To engage to pay any money, or deliver any property, or otherwise  
12   compensate any person, for procuring the attendance of voters at the  
13   polls; or  
14   5. To contribute money for any other purpose, intended to promote  
15   the election of any particular person or ticket, except for defraying the  
16   expenses of printing, and the circulation of votes, handbills, and other  
17   papers, previous to any such election, or for conveying sick, poor or in-  
18   firm electors to the polls.

## SEC. 515.

1    Every person offending against the provisions of sections 512 and  
2   514, shall be deemed guilty of misdemeanor punishable by fine not ex-  
3   ceeding                dollars or by imprisonment in the county jail not ex-  
4   ceeding

## SEC. 516.

1    Every person offending against the provisions of section 513, shall be  
2   adjudged guilty of felony, and on conviction be imprisoned in the state's  
3   prison, for a period not exceeding one year.

## SEC. 517.

1    It shall be the duty of the district attorney of the county, where the  
2   offence shall have been committed to adopt effectual measures to punish  
3   all persons, who without being legally qualified, shall vote or attempt  
4   to vote at any election in this state.



## SEC. 518.

1 It shall be the duty of every inspector of elections, sheriff, constable  
2 and justice of the peace, knowing or having good reason to believe that  
3 any of the provisions of this Title have been violated, to give notice  
4 thereof to the district attorney of the county, where the offence was  
5 committed.

## SEC. 519.

1 To be the same as section 524 in original title.

## TITLE 44.

**Miscellaneous provisions.**

- SECTION 525. Hamilton and Fulton to elect one member of Assembly jointly.
526. Votes given in Hamilton to be canvassed by county board and sent to clerk of Fulton county.
527. Canvassers of Fulton to receive and canvass votes thus sent.
528. Majority of inspectors of election to act.
529. Proceedings, if a majority do not attend.
530. Notices, when not directed to county clerk and county judge.
531. Accounts for county clerks' services, under this chapter, to be county charges.
532. Allowance to clerks of polls for services.
533. Secretary of State to cause this chapter to be printed and distributed to certain officers.

## SEC. 525.

1 The county of Hamilton and the county of Fulton shall jointly elect  
2 one member of assembly; and for all the purposes of this act, the coun-  
3 ty of Hamilton shall be deemed part of the county of Fulton.

## SEC. 526.

1 It shall be the duty of the board of canvassers in the county of  
2 Hamilton, to canvass all votes given in said county in the same man-  
3 ner as though the said county was fully organized; and the said board  
4 of canvassers shall, after they have thus canvassed, transmit to the  
5 county clerk of the county of Fulton, a statement and certificate of all  
6 the votes for the office of governor, lieutenant-governor, senators, rep-



7 representatives in congress, and electors and members of assembly, or  
8 either of them under their signatures, and to be certified by the county  
9 clerk under his seal of office; and which shall be sent to the county  
10 clerk's office of the county of Fulton, on or before the first Tuesday  
11 following such election, by a messenger to be appointed by the board  
12 of county canvassers of the county of Hamilton.

## SEC. 527.

1 It shall be the duty of the county clerk, and the board of canvassers  
2 of the county of Fulton, to receive and canvass the votes thus trans-  
3 mitted to them, in the same manner as though the canvassers of the  
4 county of Hamilton were present.

## SEC. 528.

1 It shall be lawful for a majority of the inspectors of any election,  
2 held in pursuance of this chapter, to execute all the trusts and duties  
3 required to be executed by the inspectors of any such election.

## SEC. 529.

1 If a majority shall not be present on any day on which an election is  
2 held, the inspectors or inspector attending, shall appoint so many elec-  
3 tors of the town, ward or district, to act as inspectors, as may be neces-  
4 sary to form a board.

## SEC. 530.

1 The persons so appointed shall take the constitutional oath, and con-  
2 tinue to act until a majority of the inspectors shall attend.

## SEC. 531.

1 No notice of an election, nor copy of the Governor's proclamation  
2 shall in any case be directed to the clerk of a county, unless the office



3 of sheriff of such county shall then be vacant, nor to the first judge un-  
4 less the office of sheriff and clerk shall both be vacant.

## SEC. 532.

1 The accounts of the respective clerks of counties for services perform-  
2 ed, and expenses incurred by virtue of this chapter, shall be audited,  
3 levied and paid in like manner as other contingent charges of such  
4 counties.

## SEC. 533.

1 The clerks of the polls, shall severally be allowed one dollar and  
2 twenty-five cents per day for their services rendered, pursuant to the  
3 provisions of this chapter.



























New-York Code First report of the Commissioners of the Code

Bd.: I

Albany 1849

4 J.rel. 960-1

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